NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 112 of 2025

(Arising out of the Order dated 16.04.2025 passed by the National Company Law Tribunal, Delhi Bench, Court No. II in I.A. No. 115/2025 In C.P. No. 48/ND/2024)

IN THE MATTER OF:

1. Exclusive Capital Limited
Through Mr. Achal Kumar Jindal
Registered Office at 7/17, L.G.F.,
Near Hauz Khas Metro Station, Sarvpriya Vihar,
South Delhi, New Delhi-110016. **…Appellant No. 1**

2. Mr. Satya Prakash Bagla
7/17, LGF, Near Hauz Khas Metro Station, Sarvpriya Vihar, South Delhi, New Delhi-110016 **…Appellant No. 2**

3. Mr. Achal Kumar Jindal
7/17, LGF, Near Hauz Khas Metro Station, Sarvpriya Vihar, South Delhi, New Delhi-110016 **…Appellant No. 3**

Versus

1. Mrs. Kanta Agarwala
8A, Queen’s Park, Ballygunge, Kolkata – 7000019 **…Respondent No. 1**

2. Mr. Suresh Agarwala
8A, Queen’s Park, Ballygunge, Kolkata – 7000019 **…Respondent No. 2**

Present

For Appellant: Mr. Siddharth Yadav, Sr. Adv. alongwith Mr. Apoorv Agarwal, Mr. Manav Goyal, Ms. Ritika Gusain, Ms. Aastha & Ms. Amrita.

For Respondents:	Mr. Arijit Maitra, Ld. Observer. Mr. Sidhant Kumar & Ms. Ekstha Kashyap, for R-1 & 2.

J U D G E M E N T

(25.08.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellants i.e., Exclusive Capital Limited (Appellant No. 1), which is the registered company, Mr. Satya Prakash Bagla (Appellant No. 2), who is the promoter director and shareholder of the Appellant No. 1 and Mr. Achal Kumar Jindal (Appellant No. 3), who is the Director and authorized representative of the Appellant No. 1 Company, under Section 421 (1) of Companies Act, 2013 **('Company Act')** against the Order dated 16.04.2025 **("Impugned Order")** passed by the National Company Law Tribunal, New Delhi Bench (Court-II) **("NCLT/Tribunal")** in I.A. No. 115/2025 in Company Petition No. 48/ND/2024.

The Respondent Nos. 1 and 2, i.e. Mrs. Kanta Agarwala and Mr. Suresh Agarwala, respectively, are the shareholders of Appellant No.1 company.

2. The Appellants submitted that they are aggrieved by the Impugned Order dated 16.04.2025 passed by the Tribunal in I.A. No. 115 of 2025, primarily on the ground that the said Impugned Order was without jurisdiction and liable to be set aside. It is submitted that the Tribunal, despite having finally adjudicated and disposed of Company Petition No. 48 of 2024 by Judgment dated 15.05.2024, proceeded to entertain a fresh Interlocutory Application filed by the Respondent, seeking substantive reliefs and the Tribunal passed directions restraining the Appellant No. 1 from convening its 29th and 30th Annual General Meetings besides issuing further directions relating to the affairs of the Company. According to the Appellants, once the Company Petition stood disposed of, the Adjudicating Authority became *functus officio* and lacked jurisdiction to entertain any fresh application arising out of the concluded proceedings.

3. The Appellants submitted that the Appellant No. 1 is a Non-Banking Financial Company (NBFC) duly registered with the Reserve Bank of India (RBI) and is engaged in the business of a non-banking financial institution. Appellant Nos. 2 and 3 are the Managing Director and Director of Appellant No. 1, respectively, whereas Respondent Nos. 1 and 2 are minority shareholders of the Company. It is submitted that the dispute originated from Company Petition No. 48 of 2024 instituted by the Respondents under Sections 241 and 242 of the Companies Act, 2013 alleging acts of oppression and mismanagement, principally concerning the conversion of Optionally Convertible Debentures (OCD) into Compulsorily Convertible Preference Shares (CCPS), alleged diversion of funds, corporate governance issues and other ancillary allegations concerning the affairs and management of the Company.

4. The Appellants further elaborated that the they had filed detailed replies controverting each of the allegations levelled in the Company Petition and had placed on record the executed Term Sheet, the relevant corporate approvals and an independent legal opinion to demonstrate that the conversion of the OCD had been undertaken strictly in accordance with law and the contractual arrangements between the parties. It is submitted that after completion of pleadings and hearing all concerned parties, the Tribunal adjudicated the disputes raised in the Company Petition and disposed of the same on merits by Judgment dated 15.05.2024 after granting appropriate consequential reliefs. According to the Appellants, no issue or proceeding remained pending before the Tribunal after the pronouncement of the said Judgment.

5. The Appellants submitted that being aggrieved by the Judgment dated 15.05.2024, the Appellants preferred Company Appeal (AT) Nos. 161 and 162 of 2024 before this Appellate Tribunal. During the pendency of the Appeals, this Appellate Tribunal passed various interim orders regulating the affairs of Appellant No. 1. Attention was invited to the interim orders whereby Hon'ble Justice R.K. Gauba (Retd.) was initially appointed as Administrator and subsequently directed to function as an Observer to oversee the affairs of the Company. It is submitted that the Observer was entrusted with specific responsibilities including presiding over meetings of the Board of Directors, preparing an inventory of assets, verifying allegations regarding financial transactions and related party dealings, and reporting to the Tribunal from time to time.

6. It is further submitted by the Appellants that while the Appeals remained pending before this Appellate Tribunal, several ancillary proceedings also came to be initiated before different judicial and regulatory forums. It is submitted that apart from pursuing proceedings before this Appellate Tribunal, the Respondents and entities acting in concert with them, approached the Hon'ble High Court of Delhi, the Hon'ble Supreme Court and the RBI by raising substantially similar allegations concerning the management and affairs of Appellant No. 1 company. According to the Appellants, the RBI, being the statutory regulator governing NBFC, independently examined the allegations made by the Respondents and initiated proceedings in accordance with its regulatory framework. It is, therefore, contended that the affairs of Appellant No. 1 were already subject to scrutiny before multiple competent forums. According to the Appellants, despite pursuing remedies before all such forums, the Respondents once again approached the Tribunal seeking substantially similar reliefs, with the object of obtaining overlapping orders concerning the management of the Company. Such repeated institution of proceedings, it is submitted, not only resulted in multiplicity of litigation but also exposed the Appellants to conflicting judicial directions and unwarranted interference in the functioning of the Company.

7. The Appellants submitted that by Order dated 24.02.2025, Special Leave Petition (Civil) No. 4534of 2025 filed by the Appellant, the Hon'ble Supreme Court of India stayed the operation of the orders passed by the Delhi High Court, while preserving the role of the Observer appointed pursuant to the orders of this

Appellate Tribunal, granted liberty to the parties to approach the NCLT/NCLAT for appropriate directions in accordance with law. The Appellants further submitted that the Hon'ble Supreme Court simultaneously observed that proceedings before the NCLT and the NCLAT could continue and that any application moved by the parties was required to be considered strictly in accordance with law.

8. The Appellants submitted that immediately after the Order of the Hon'ble Supreme Court, the Respondents instituted I.A. No. 115 of 2025 **(Suspension Application)** before the Tribunal seeking wide-ranging interim reliefs, including suspension of the Board of Directors, stay of the proposed 29th and 30th Annual General Meetings, stay of the minutes of the Board Meeting dated 20.06.2024, directions for filing claims in the Corporate Insolvency Resolution Process (CIRP) of Sulojoy Realty Private Limited and appointment of a Local Commissioner for taking possession and inspection of certain assets of the Company. It is submitted that notwithstanding the fact that the Company Petition No. 48/ND/2024 had already been finally disposed of and the Appeals against the said Judgment were pending before this Appellate Tribunal, the Tribunal entertained the said Interlocutory Application and, by the Impugned Order dated 16.04.2025, restrained the Appellant Company from convening its scheduled Annual General Meetings and issued further interim directions affecting the affairs and management of the Company. According to the Appellants, it is this Order which forms the subject matter of the present Appeal.

9. The Appellants submitted that the Impugned Order suffers from a jurisdictional defect, inasmuch as the Tribunal ceased to possess jurisdiction over the Company Petition immediately upon pronouncement of the Judgment dated 15.05.2024. It is contended that once the Company Petition stood finally adjudicated on merits, the Tribunal became *functus officio* and was divested of all jurisdiction to entertain any fresh interlocutory application seeking substantive reliefs. According to the Appellants, the proceedings before the Tribunal had attained finality and the only proceedings which thereafter survived were the statutory appeals pending before this Appellate Tribunal. Therefore, the very entertainment of I.A. No.115 of 2025 was contrary to settled principles governing the exercise of judicial jurisdiction.

10. Elaborating the aforesaid submission, the Appellants contended that an interlocutory application is merely incidental and ancillary to the principal proceedings and cannot have an independent existence, once the principal proceedings themselves have culminated in a final adjudication. It is submitted that the Suspension Application had admittedly been filed almost eleven months after the Company Petition had already been disposed of on merits and sought substantive reliefs relating to the management and affairs of the Company. Such reliefs, according to the Appellants, could not have been entertained through an interlocutory application in proceedings which had already come to an end. It is submitted that the Tribunal virtually revived concluded proceedings by entertaining the said application, which is wholly impermissible in law.

11. The Appellants submitted that the Respondents had proceeded on the erroneous premise that proceedings under Sections 241 and 242 of the Companies Act, 2013 continued to remain pending before the Tribunal even after the Judgment dated 15.05.2024. It is contended that such an assumption is contrary to the record, inasmuch as the Company Petition had already been finally decided after considering the pleadings and submissions of all parties. According to the Appellants, once the final Judgment came to be challenged before this Appellate Tribunal, the entire subject matter stood transferred to the appellate forum for consideration and no substantive issue survived before the Tribunal. It is submitted that the Respondents, despite actively contesting the pending Appeals before this Appellate Tribunal, could not simultaneously contend that the proceedings remained pending before the Tribunal so as to justify filing of a fresh interlocutory application.

12. The Appellants addressed the reliance placed by the Respondents upon the Order dated 24.02.2025 passed by the Hon'ble Supreme Court. It is submitted that the liberty granted by the Hon'ble Supreme Court to approach the NCLT/NCLAT could not be construed as enlarging or creating fresh jurisdiction in favour of the Tribunal where none otherwise existed. According to the Appellants, jurisdiction is conferred only by statute and cannot be assumed merely because liberty has been granted by a superior court to approach an appropriate forum. The Appellants emphasised that the Hon'ble Supreme Court had specifically observed that any such application was required to be considered "in accordance with law", thereby requiring the forum approached to first satisfy itself regarding its own jurisdiction before proceeding to entertain the application. It is argued that the Tribunal failed to undertake this essential exercise and proceeded on the erroneous assumption that the liberty granted by the Hon'ble Supreme Court, by itself, empowered it to entertain the Suspension Application.

13. The Appellants further submitted that the Order dated 24.02.2025 passed by the Hon'ble Supreme Court, when read as a whole, in fact militated against the reliefs sought by the Respondents. It is pointed out that while granting liberty to the parties to approach the NCLT/NCLAT, the Hon'ble Supreme Court had preserved the functioning of the Observer appointed pursuant to the orders of this Appellate Tribunal. According to the Appellants, the Suspension Application by the Respondents before the Tribunal, by seeking various reliefs inter alia stay of the Annual General Meetings, were intended to defeat and nullify the very order by the Hon'ble Supreme Court, and therefore the Tribunal ought not to have granted reliefs which were directly inconsistent with the orders of the Hon'ble Supreme Court.

14. The Appellants further contended that the Respondents were throughout aware that the affairs and management of Appellant No.1 were already under the supervision of this Appellate Tribunal. It is submitted that the Respondents were parties to Company Appeal (AT) Nos.161 and 162 of 2024 and had been participating in the appellate proceedings on every material date. In such circumstances, according to the Appellants, there was no justification for approaching the Tribunal seeking substantially identical reliefs concerning the management and functioning of the Company. It is argued that such conduct was contrary to settled principles of judicial discipline and was likely to result in overlapping and conflicting judicial orders concerning the same subject matter.

15. The Appellants argued that the Suspension Application was nothing but a collateral attempt to circumvent the appellate proceedings pending before this Appellate Tribunal and to secure, through the Tribunal, reliefs which were otherwise the subject matter of the pending Appeals. According to the Appellants, the Respondents deliberately invoked the jurisdiction of a forum which had already become *functus officio* with the sole object of paralysing the day-to-day affairs of Appellant No.1 and obtaining orders inconsistent with the interim arrangement already operating under the directions of this Appellate Tribunal and the Hon'ble Supreme Court. It is, therefore, submitted that the Impugned Order, having been passed without jurisdiction and in proceedings which were themselves not maintainable, deserved to be set aside.

16. The Appellants further submitted that the Impugned Order also overlooks the statutory framework governing Appellant No. 1, which is a NBFC regulated under the provisions of the Reserve Bank of India Act, 1934 and the directions issued thereunder. It is contended that matters relating to inspection, supervision, regulatory compliance and investigation into the affairs of an NBFC fall exclusively within the domain of the RBI, being the specialised statutory regulator. According to the Appellants, the allegations forming the basis of the

Suspension Application had already been brought to the notice of the RBI by the Respondents through various complaints and representations. Pursuant thereto, the RBI had examined the allegations, filed its Status Report before the Hon'ble High Court of Delhi, issued a Show Cause Notice to Appellant No.1 and thereafter concluded the regulatory proceedings by passing an order dated 21.03.2025 and finally dated 27.03.2026 after considering the explanation furnished by the Appellants and imposing monetary penalty of Rs. 10.30 Lakhs vide RBI order having subject matter 'Non-compliance with the directions issued by Reserve Bank of India by Exclusive Capital Limited' which was issued by RBI vide letter No. ENFD.NBFC.No.369/27-02-110/2025-2026 dated 30.03.2026**.** The Appellant also brought to our notice that in fact RBI has filed an affidavit dated 29.05.2026 before the Hon'ble Supreme Court in Civil Appeal No. 15207 of 2025. It is, therefore, submitted that once the statutory regulator had already seized itself of the issues concerning the affairs of Appellant No.1, there was no occasion for the Tribunal to assume the role of a regulatory authority by issuing directions regulating the business and management of the Company.

17. The Appellants further contended that the Respondents had failed to approach the Tribunal with complete candour and had obtained the Impugned Order by suppressing material facts. It is submitted that while instituting I.A. No.115 of 2025, the Respondents deliberately omitted to disclose that the Company Petition had already been finally adjudicated and disposed of on 15.05.2024 and that the said Judgment was under challenge before this Appellate

Tribunal in Company Appeal (AT) Nos.161 and 162 of 2024. According to the Appellants, the Suspension Application was drafted in a manner which created the impression that proceedings under Sections 241 and 242 of the Companies Act, 2013 continued to remain pending before the Tribunal, whereas in reality the dispute had already travelled to the appellate forum. It is submitted that the Respondents also failed to disclose that substantially identical allegations had already been raised before this Appellate Tribunal, the Hon'ble High Court of Delhi, the Hon'ble Supreme Court, the Observer appointed by this Appellate Tribunal and the RBI.

18. Concluding arguments, the Appellants requested this Appellate Tribunal to set aside the Impugned Order and allow this appeal.

19. Per contra, the Respondents denied all averments made by the Appellants as misleading and baseless.

20. The Respondents submitted that the present Appeal proceeds on the premise that the Tribunal became functus officio upon passing the order dated 15.05.2024. The Respondents emphasized that the order dated 15.05.2024 was never intended to finally adjudicate Company Petition No. 48 of 2024 instituted under Sections 241 and 242 of the Companies Act, 2013. It merely granted interim protective measures after recording prima facie finding of serious acts of oppression and mismanagement committed by Appellant Nos. 2 to 4 in the affairs of Appellant No. 1. The substantive reliefs sought in the Company Petition continue to remain pending adjudication before the Tribunal.

21. The Respondents submitted that the Company Petition was instituted on 28.02.2024 by the minority shareholders collectively holding 10% equity shareholding in the Appellant No. 1 after discovering grave acts of oppression, mismanagement, diversion of corporate funds and violations of the regulatory framework governing NBFCs. The Respondents elaborated that upon a prima facie consideration of the material placed on record, the Tribunal found sufficient grounds indicating serious financial irregularities, siphoning of funds through related party transactions and violations of the applicable RBI Directions. Consequently, the Tribunal suspended the existing management, appointed Justice R.K. Gauba (Retd.) as Administrator for a period of 180 days and entrusted him with the responsibility of safeguarding the assets of the Company, preparing an inventory and evolving a scheme for reconstitution of the Board of Directors. These directions were manifestly interim in nature and were intended solely to preserve the affairs of the Company pending final adjudication of the Company Petition.

22. It is further submitted by the Respondents that the interim arrangement was subsequently modified by this Appellate Tribunal vide order dated 31.05.2024 whereby the Administrator was re-designated as the Observer while retaining supervisory control over the affairs of the Company. The management was simultaneously restrained from alienating the assets of the Company or taking any major policy decisions without complying with the directions issued by this Appellate Tribunal. These protective directions were reaffirmed by this Appellate

Tribunal by its subsequent order dated 23.07.2024 and thereafter received the endorsement of the Hon'ble Supreme Court of India by order dated 02.12.2024, thereby leaving no manner of doubt that the proceedings concerning the affairs of Appellant No. 1 continued to remain alive and under active judicial supervision.

23. The Respondents further submitted that, pursuant to the directions issued by this Appellate Tribunal, the Observer has submitted five independent reports before this Appellate Tribunal, recording persistent acts of non-cooperation and deliberate obstruction by the Appellants. The reports further disclose substantial financial irregularities including undocumented preferential loans aggregating to ₹55 Crores, inflated purchases of luxury vehicles amounting to approximately ₹16 Crores, and several other unexplained financial transactions indicative of siphoning of corporate funds. The Respondents stated that the repeated findings contained in the Observer's reports, appointed under judicial order and confirmed by the Hon’ble Supreme court, demonstrates that the allegations forming the subject matter of the Company Petition continue to require adjudication and reinforce the necessity of continued judicial oversight over the affairs of the Company.

24. The Respondents submitted that despite the subsistence of the aforesaid judicial directions, the Appellants continued to act in complete disregard thereof. In particular, the Appellants purported to appoint M/s K.S. Oberoi & Co. as the statutory auditor together with independent directors and a Chief Financial

Officer in a Board Meeting allegedly held on 20.06.2024. However, the Observer categorically recorded that he had objected to such appointments during the meeting, that the decisions stood deferred, and that no valid approval had been granted. The Observer further recorded that the minutes of the said meeting were never authenticated or even shared with him. Notwithstanding these recorded objections, the Appellants proceeded to reflect the aforesaid appointments in the records maintained by the Ministry of Corporate Affairs. It is the case of the Respondents that such appointments, founded upon unauthenticated and fabricated minutes, are ex facie illegal and constitute one of the principal grievances raised by the Respondents before the Tribunal.

25. The Respondents further submitted that the subsequent proceedings before the Hon'ble Supreme Court also unequivocally negate the Appellants' plea that the Tribunal had become functus officio. The Special Leave Petitions before the Hon'ble Supreme Court arose from proceedings initiated against the RBI for its failure to take regulatory action against the Appellants. While considering those proceedings, the Hon'ble Supreme Court expressly took note of the pendency of proceedings before the Tribunal concerning the affairs of the Appellant No. 1 company and unequivocally recognised that the Tribunal continued to remain seized of the disputes. More importantly, the Hon'ble Supreme Court expressly granted liberty to the Respondents to approach the Tribunal or this Appellate Tribunal for appropriate reliefs in accordance with law. It was only so granted that the Respondents instituted I.A. No. 115 of 2025 seeking appropriate interim protection against the illegal appointments, the proposed Annual General Meetings and the continued failure of the Appellants to recover substantial dues payable to the company by its related party, Sulojay Realty Private Limited.

26. The Respondents therefore submitted that the Suspension Application, i.e., IA 115 of 2025 culminating in the Impugned Order is neither a fresh proceeding nor an attempt to reopen concluded issues. It is merely an interlocutory application filed in continuation of a pending Company Petition and in exercise of the liberty expressly granted by the Hon'ble Supreme Court. The very maintainability of such an application necessarily proceeds on the recognition that the Company Petition continues to remain pending before the Tribunal.

27. The Respondents further contended that the Appellants' attempt to characterise the issues raised in the Application as falling exclusively within the regulatory domain of the RBI is completely misconceived. The Respondent elaborated that the challenge mounted by the Respondents concerns illegal appointments, fabrication of Board minutes, violation of judicial orders, attempts to validate disputed financial statements and continued acts of oppression and mismanagement affecting the governance of the Company. The Respondents further submitted that these are matters squarely falling within the jurisdiction conferred upon the Tribunal under Sections 241 and 242 of the Companies Act, 2013. The mere fact that the Appellant No. 1 is a regulated NBFC does not divest the Tribunal of its statutory jurisdiction to examine acts of corporate mismanagement and to grant appropriate reliefs for protection of the Company's affairs.

28. The Respondents submitted that the foundation of the present Appeal is legally untenable. The Company Petition remains pending, the Tribunal continues to exercise jurisdiction over the affairs of the Company, the Application was filed pursuant to the liberty expressly granted by the Hon'ble Supreme Court, and the Impugned Order has been passed in valid exercise of the Tribunal's continuing jurisdiction. The Appellants' plea that the Tribunal had become functus officio is therefore wholly devoid of merit and deserves outright rejection.

29. The Respondents submitted that the Appellants have sought to assail the Impugned order which is purely ad-interim in nature and does not determine any substantive rights of the parties. The Impugned Order was passed at the very threshold of the proceedings upon the first consideration of I.A. No. 115 of 2025 and merely directed the Appellants to file their response to the Application, deferred the holding of the 29th and 30th Annual General Meetings scheduled on 18.04.2025 till the next date of hearing, and directed appropriate steps to be taken for recovery of the outstanding dues payable to Appellant No. 1 company by Sulojay Realty Private Limited. The Tribunal consciously refrained from rendering any final opinion on the merits of the disputes raised in the Application and merely granted interim protection so that the issues involved could be effectively adjudicated after hearing all the parties.

30. The Respondents submitted that the limited nature of the Impugned Order itself demonstrates that it neither adjudicates any legal right nor confers any irreversible advantage upon the Respondents. The order merely preserves the existing state of affairs pending consideration of the Application on merits so as to ensure that the subject matter of the proceedings is not rendered infructuous. Such an order is interlocutory in character and is intended only to prevent irreversible prejudice during the pendency of judicial proceedings. The Appellants, therefore, cannot seek to treat an interim protective arrangement as though it were a final adjudication affecting their substantive rights.

31. It is further submitted that the jurisdiction exercised by the Tribunal while passing the Impugned Order is entirely consistent with the statutory powers conferred under Section 242 of the Companies Act, 2013, which empowers the Tribunal to pass such interim orders as may be necessary for regulating the affairs of the company and safeguarding its assets pending final adjudication of allegations of oppression and mismanagement. Where serious allegations concerning diversion of funds, illegal appointments, corporate governance failures and violation of judicial orders remain under active consideration, the Tribunal is not only empowered but is duty-bound to ensure that no further steps are taken which may prejudice the interests of the company or frustrate the final reliefs sought in the main proceedings.

32. The Respondents further submitted that the necessity for interim protection assumes even greater significance in the facts of the present case, where the affairs of the Company continue to remain under judicial supervision pursuant to the earlier orders passed by the Tribunal, this Appellate Tribunal and the Hon'ble Supreme Court. The Observer has repeatedly recorded instances of non-compliance with judicial directions, obstruction in discharge of his functions and continued acts of financial impropriety on the part of the Appellants. In such circumstances, the Tribunal was fully justified in exercising abundant caution by maintaining the existing position until the legality of the impugned actions could be examined on merits.

33. The Respondents contended that the Appellants have failed to demonstrate any perversity, arbitrariness or jurisdictional error warranting interference with the exercise of judicial discretion by the Tribunal. Merely because another view may also be possible cannot constitute a valid ground for appellate interference with an interlocutory order passed in exercise of judicial discretion. The Respondent submitted that the Appellants have failed to establish any circumstance demonstrating that the Tribunal acted beyond its jurisdiction or exercised its discretion in an unreasonable or arbitrary manner. The Respondents further submitted that the appellate interference with discretionary interim orders is extremely limited and that the appellate court ought not to substitute its own discretion merely because another view is possible, unless the order is contrary to settled legal principles.

34. It is further submitted that the Hon'ble Supreme Court has also recognised that while exercising jurisdiction under Section 242 of the Companies Act, 2013, the primary consideration of the Tribunal is to preserve the corporate substratum and protect the assets and affairs of the company until the disputes relating to oppression and mismanagement are finally adjudicated. The Respondent explained that the interim measures under Section 242 of the Companies Act, 2013 are intended to maintain the status quo and safeguard the interests of the company so that the final adjudication is not rendered meaningless by subsequent events. The Impugned Order is a classic illustration of such a protective exercise of jurisdiction.

35. The Respondents submitted that if the Appellants had been permitted to proceed with the Annual General Meetings during the pendency of the Application, the financial statements and corporate decisions sought to be approved therein would have acquired a semblance of statutory legitimacy, thereby materially complicating the pending proceedings before the Tribunal. The object of the Impugned Order was, therefore, not to restrain the legitimate functioning of the Company but to ensure that no irreversible corporate actions were undertaken while serious disputes regarding the legality of the underlying financial statements, the validity of the statutory auditor's appointment and the alleged siphoning of funds remained sub-judice.

36. The Respondents submitted that the Impugned Order represents a measured, balanced and protective exercise of judicial discretion intended solely to preserve the status quo until the Application is decided on merits after considering the pleadings and submissions of all concerned parties. The

Respondents stated that the Appellants have neither demonstrated any prejudice incapable of subsequent rectification nor established any legal infirmity in the exercise of such discretion. Consequently, the Appeal, insofar as it seeks interference with a purely ad-interim order preserving the existing state of affairs, is wholly misconceived and deserves to be dismissed.

37. The Respondents submitted that the financial statements in question were fundamentally vitiated as they had been prepared and certified by M/s K.S. Oberoi & Co., whose very appointment as the statutory auditor is illegal and void. The said appointment purportedly emanated from a Board Meeting allegedly held on 20.06.2024. However, the Observer, who presided over the said meeting pursuant to the directions of this Appellate Tribunal, categorically recorded that he had objected to the appointment of the statutory auditor, independent directors and the Chief Financial Officer and that the proposed appointments stood deferred. The Observer further recorded that the minutes of the meeting were never authenticated or even circulated to the observer for approval. Despite these categorical observations, the Appellants proceeded to act upon unauthenticated and fabricated minutes and reflected the appointments in the records maintained by the Ministry of Corporate Affairs. Consequently, every action founded upon such illegal appointments, including the preparation and certification of the financial statements, is rendered legally unsustainable.

38. The Respondents submitted that the direction deferring the 29th and 30th Annual General Meetings was not only justified but was imperative to safeguard the interests of Appellant No. 1. The proposed Annual General Meetings were intended to consider and adopt the financial statements for the Financial Years 2022-23 and 2023-24 despite serious and subsisting doubts regarding their legality, authenticity and validity. The Tribunal, upon a prima facie consideration of the material placed before it, rightly observed that the financial statements sought to be approved were "under cloud" and, therefore, required judicial scrutiny before being placed before the shareholders for adoption.

39. The Respondents further submitted that even independently of the illegal appointment of M/s K.S. Oberoi & Co., the financial statements for the Financial Year 2022-23 suffer from a fundamental legal infirmity. The erstwhile statutory auditor has categorically stated before the Tribunal that the financial statements for the said financial year were never finalised by it. This position also stands corroborated by the Status Report dated 12.08.2024 filed by the RBI before the Hon'ble High Court of Delhi. Thus, the financial statements for the Financial Year 2022-23 had admittedly never attained finality through the duly appointed statutory auditor. Such incomplete financial statements could not subsequently be resurrected or retrospectively validated by an auditor whose own appointment is under a serious legal cloud.

40. The Respondents further contended that the financial statements for the Financial Year 2023-24 are equally invalid as they were never approved in the manner contemplated under Section 134 of the Companies Act, 2013. The statutory framework mandates approval of the financial statements by a duly constituted Board acting in accordance with law. In the present case, no such valid approval exists. The Company admittedly did not have a legally constituted Audit Committee in conformity with Section 177 of the Companies Act, 2013 and Regulation 94 of the RBI Master Directions applicable to NBFC, both of which require the presence of independent directors forming the prescribed composition of the Audit Committee. Since there were no validly appointed independent directors after February 2024, the mandatory statutory requirements governing approval of the financial statements remained unfulfilled.

41. It is further submitted by the Respondents that the infirmities in the approval process are compounded by the findings of the Observer regarding the functioning of the Board itself. Observer Report No. 3 specifically records that the Board Meeting held on 10.03.2025 was adjourned and no formal resolutions or decisions were validly taken therein. In the absence of any valid Board approval, the financial statements sought to be placed before the shareholders remained legally incomplete and incapable of being considered for adoption at the proposed Annual General Meetings.

42. The Respondents contended that permitting the Appellants to convene the Annual General Meetings under such circumstances would have enabled them to secure shareholder approval for financial statements incorporating the very transactions whose legality is under examination before the Tribunal and this Appellate Tribunal. Such approval would not merely have been a procedural formality but would have conferred an unwarranted appearance of legitimacy upon transactions which continue to be seriously disputed. The Appellants cannot be permitted to utilise the statutory mechanism of an Annual General Meeting as a means of sanitising or legitimising acts of alleged oppression, mismanagement and siphoning of funds which remain pending judicial scrutiny.

43. It is further submitted by the Respondents that the proposed adoption of the financial statements would have had far-reaching legal and commercial consequences. Once approved, such financial statements would constitute the official financial record of the Company and could potentially be relied upon before regulatory authorities, financial institutions, shareholders and other stakeholders. Allowing such approval during the pendency of proceedings questioning the legality of the underlying transactions would seriously prejudice the rights of the Respondents and undermine the efficacy of the proceedings pending before the Tribunal.

44. The Respondents submitted that the Tribunal rightly exercised its discretion in deferring the Annual General Meetings until the issues relating to the legality of the statutory auditor's appointment, the validity of the financial statements, compliance with the mandatory provisions of the Companies Act, and the serious allegations of siphoning and diversion of funds are duly examined and adjudicated. The Impugned Order merely prevents the Appellants from obtaining approval of disputed financial statements through a statutory process while the very foundation of those statements remains under challenge. The direction is thus manifestly equitable, legally justified and necessary to preserve the integrity of the pending proceedings, and warrants no interference by this Appellate Tribunal.

45. Concluding arguments, the Respondents requested this Appellate Tribunal to dismiss the appeal.

Findings

46. The principal controversy between the parties has already been considered in Company Appeal (AT) Nos. 161 in C.P. No. 48/ND/2024 and Company Appeal (AT) Nos. 162 in C.P. No. 48/ND/2024, the Judgment whereof is also being pronounced simultaneously with the outcome of this Appeal by this Appellate Tribunal. In the present Appeal, we confine ourselves to the issues arising from the Impugned Order under challenge passed in I.A. No. 115 of 2025 in C.P. No. 48/ND/2024.

47. At this stage, we would look into the relevant portion of the Impugned Order dated 16.04.2025, capturing the reliefs sought therein, which reads as under:

IA-115/2025: Stating succinctly, the CP No. 48/(ND)/2024 has been preferred by the Petitioner seeking *inter alia* direction for Respondent No. 1 viz. Exclusive Capital Limited ("ECL") to take action for allotting 28,83,506 shares to the Petitioner against infusion of Rs. 5 Cr made by her in the company and further, to direct removal of Respondent No. 2, 3 and 4 from their respective position in the board. While the CP No. 48/(ND)/2024 is pending before us, the captioned I.A. has been preferred by the Applicant seeking the following reliefs: -

(i) *Suspend the board of management of ECL comprising Respondent Nos. 2 to 4 and direct the Ld. Observer (Justice R.K. Gauba (Retd.) appointed by NCLAT to take control over, and manage, all the affairs of Respondent No. 1;*

(ii) *Stay the operation of the Notice dated 10 March 2025 concerning the 29th and 30th AGM and restrain the ECL Board from conducting the AGMs on 18 April 2025 or any date thereafter till the final adjudication of this Application;*

(iii) *Stay the operation and effect of the purported minutes of meeting dated 20 June 2024 of the Board of Directors of Respondent No. 1;*

(iv) *Direct the ECL Board (Respondent Nos. 2-4) / Ld. Observer on behalf of Respondent No. 1 to file a claim before the Interim Resolution Professional of Sulojay Realty Private Limited for the outstanding dues under the unpaid loan disbursed by ECL;*

(v) *Appoint a local commissioner take possession of the Luxury Cars, inspect them, and furnish a report to this Hon'ble Tribunal;*

(vi) *Pass any other-further order(s) as this Hon'ble Tribunal may deem fit and proper in lights of the facts and circumstances of the present case, and in the interest of justice.*

…..

48. Having heard the parties and perused the record, the following issues arise for determination:

Issue No. 1: Whether the Tribunal had become functus officio upon disposal of C.P. No. 48/ND/2024 vide order dated 15.05.2024, so as the Tribunal, to be denuded of jurisdiction to entertain I.A. No. 115/2025?

Issue No. 2: Whether the Tribunal lacked jurisdiction to pass the Impugned Order in light of the Hon'ble Supreme Court's order dated 24.02.2025 in the pending SLPs?

Issue No. 3: Whether, in any event, the Impugned Order calls for this Appellate Tribunal interference?

49. Now, we will determine these issues framed earlier.

50. Issue No. 1: Whether the Tribunal had become functus officio upon disposal of C.P. No. 48/ND/2024 vide order dated 15.05.2024, so as the Tribunal, to be denuded of jurisdiction to entertain I.A. No. 115/2025?

51. It can be said that the term Functus officio is a Latin legal term meaning "having performed his office". In law, it describes as court whose mandate and authority have expired because it has completely fulfilled its duties. Once a court becomes functus officio, it loses all power to alter, reconsider, or reopen its own decision. The doctrine ensures legal certainty by preventing decision-makers from changing their minds after a final judgment or award has been rendered. For example, once a Tribunal issues final judgment, its authority over that specific matter ends. It cannot later amend its own decision.

52. The Appellants contended before us that since C.P. No. 48/ND/2024 was disposed of by order dated 15.05.2024, the Tribunal ceased to have any jurisdiction over the matter and became functus officio, rendering the Suspension Application, and consequently the Impugned Order, a nullity. We are conscious of the fact that the order dated 15.05.2024 disposing of the Company Petition was itself challenged before this Appellate Tribunal in two Company appeals i.e. Company Appeal (AT) Nos. 161 in C.P. No. 48/ND/2024 and Company Appeal (AT) Nos. 162 in C.P. No. 48/ND/2024. In this connection we need to appreciate that the doctrine of functus officio presupposes a concluded proceeding with no further lis alive between the parties is conspicuously absent here. The very correctness of the disposal is sub-judice.

53. In order to assess the events after passing of the Order dated 15.05.2024 in CP/48/ND/2024 by the Tribunal, we take into consideration the relevant portion of the relevant orders passed by this appellate tribunal, subsequent to filing Company Appeal (AT) (INS) No. 161 of 2024 and Company Appeal (AT) (INS) No. 162 of 2024 by the Appellants, which reads as under:

<u>NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 22.05.2024</u>

> *"22.05.2024: We have heard Counsel for the Appellant at some length. The Tribunal has issued directions for the appointment of an Administrator and cancellation of*

OCD/CCPs and also for return of the amount to the stakeholders……………………

Till the next date of hearing, there shall be status quo in respect of the impugned order as prayed.”

(Emphasis supplied)

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 31.05.2024

“31.05.2024: This is an appeal filed against the impugned order dated 15.05.2024 passed by the Ld. National Company Law Tribunal, Court No.2, New Delhi in CP No.48/ND/2024 wherein an Administrator is appointed of Respondent No.3 with the powers given in para 73 of the impugned order………………

5. The appellants have substantially argued the matter and the Respondents shall be arguing on the next date. ***At this stage, we modify the interim relief of grant of status quo in respect of the impugned order vide our order dated 22.05.2024, to the extent that, we hereby direct let Hon'ble Justice Mr. R.K. Gauba to act as an Observor, and he shall preside over the Board of Directors' Meetings and no major policy decision be taken by the Board and let there be no alienation of assets of R3(Exclusive Capital Ltd) till the next date of hearing. The Ld. Observor in the meantime may prepare a complete inventory of all assets of R3 and also a list of shareholders and a list of secured and unsecured creditors. The Observer shall verify the allegation qua the financial transactions, including those of related party qua***

siphoning of funds. All the parties to cooperate with the Ld. Observer and to make available to him all documents/information as requisitioned by the Ld. Observer.

6. Ld. Observer shall be entitled to pay and allowances and facilities as admissible to the CEO/Managing Director of Respondent No.2.

7. The Ld. Observer shall be at liberty to approach this Tribunal for any clarifications or directions.

8. List the appeal on 3rd and 5th July, 2024 for further hearing.

(Emphasis supplied)

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 23.07.2024

"23.07.2024: Two applications are listed before us. IA No.4305/2024 for recall of the order dated 31.05.2024 as well as the contempt petition filed by the Respondents. It is the submission of the learned counsel for the Respondent the appellant has not complied with the order dated 31.05.2024 as much as has failed to supply the information as was required by the Ld. Observer…………………………………………………….

4. ***We have gone through the order dated 31.05.2024. The Ld. counsel for the appellant is aggrieved of the fact the said order dated 31.05.2024 requires the Ld. Observer to verify all the allegations made in the pleadings including those related to siphoning of funds and related parties. We have***

perused the order dated 31.05.2024, we clarify such directions were to examine the financial transactions qua siphoning of funds and of related parties.

5. In the circumstances let the requisite information as desired by the Ld. Observer in connection to above be supplied and compliance report be filed by the appellant within two weeks.

List on 9th August, 2024."

(Emphasis supplied)

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 09.09.2024

"9. The Ld. Observer has furnished Report No. 1 dated 01.07.2024 and has furnished Observer Notes: No. 1 dated 07.06.2024, No. 2 dated 19.06.2024, No. 3 dated 08.08.2024, No. 4 dated 01.09.2024 and No. 5 dated 09.09.2024.

In all his reports and Notes, the Ld. Observer has repeatedly brought out that the Company ECL and the appellants are not cooperating and not providing information and documents necessary and vital for carrying out the mandate given by the Tribunal.

15. ***As a last resort we direct the Appellants and Respondent No.3(ECL) to supply the information/documents requisitioned by the Ld. Observer as enlisted in the chart dated 12.09.2024 on or before 10.10.2024. Noncompliance of these directions will constrain us to take the Contempt Case (AT) No. 17 of 2024 on the next date of hearing for appropriate order(s).***

(Emphasis supplied)

NCLAT order passed in Company Appeal (AT) No. 161 & 162 of 2024 vide order dated 16.12.2024

> *"16.12.2024: The learned counsel appearing on behalf of the Learned Observer has taken us to the part of the Learned Observer's Report-Note No.2 to submit there have been related party transactions etc. However, no further time is left as at 2 PM, another part heard matter- M/s Quantum Mutual Fund & Ors Vs ICICI Securities Ltd & Anr is pending for remaining argument, List the matter on 23.12.2024 for hearing.*
>
> ***An apprehension is raised by Mr. Rajeev Nayyar, Learned senior counsel on behalf of the Respondent the appellants are in the process of appointing a new director and also are continuously siphoning of money of the company. The Learned senior counsel appearing on behalf of the appellant fairly submits till the next date of hearing, there shall be no appointment of an independent director. It is also directed if an amount of more than Rs.10 lakhs is spent by the company, the directors viz the appellants, shall inform/bring it to the notice of the Ld. Observer and if the amount to be spent is more than Rs.25 lacs, the concurrence of the Ld. Ld. Observer be taken. Put up on 23.12.2024 for further hearing.****"*

(Emphasis supplied)

54. We note that this Appellate Tribunal order dated 23.07.2024 (quoted earlier) was challenged by the Appellants before the Hon'ble Supreme Court, who did not interfere with this Appellate Tribunal order dated 23.07.2024. The order dated 02.12.2024 of the Hon'ble Supreme court reads as under:

CIVIL APPEAL (arising out of Diary No. 45598 of 2024) order dated 02.12.2024 passed by Supreme Court of India

"Delay condoned.

We do not find any good ground and reason to interfere with the impugned judgment and, hence, the present appeal(s) is dismissed.

Pending application(s), if any, shall stand disposed of."

(Emphasis supplied)

We also take into consideration the **Hon'ble Supreme Court order dated 24.02.2025,** which was passed in identical manner, albeit, in three different matters and the Operative part of the all above three orders of the Hon'ble Supreme court is same, which reads as under:

A) **Petition for Special Leave to Appeal (C) No. 4349/2025**

[Arising out of impugned final judgment and order dated 12-02-2025 in LPA No. 1083/2024 passed by the High Court of Delhi at New Delhi]

ACHAL KUMAR JINDAL ….Petitioner(s)

VERSUS

EVAAN HOLDINGS PVT. LTD. & ORS. …Respondent(s)

(IA No. 40785/2025 - Exemption from Filing C/C of the Impugned Judgment and IA No. 41789/2025 - Permission to File Additional Documents /Facts /Annexures)

B) **Petition for Special Leave to Appeal (C) No. 4534/2025**

[Arising out of impugned final judgment and order dated 12-02-2025 in LPA No. 1081/2024 passed by the High Court of Delhi at New Delhi]

SATYA PRAKASH BAGLA …Petitioner(s)

VERSUS

EVAAN HOLDINGS PVT. LTD. & ORS. … Respondent(s)

(IA No. 42520/2025 - Exemption from filing c/c of the impugned judgment, IA No. 42523/2025 - permission to file additional documents/facts/annexures and IA No. 42521/2025 - permission to file lengthy list of dates)

C) Petition for Special Leave to Appeal (C) No. 4540/2025

[Arising out of impugned final judgment and order dated 12-02-2025 in LPA No. 1080/2024 passed by the High Court of Delhi at New Delhi]

JOHNSON KA …..Petitioner(s)

VERSUS

EVAAN HOLDINGS PVT LTD & ORS. …..Respondent(s)

(IA No. 42641/2025 - exemption from filing c/c of the impugned judgment, IA No. 42639/2025 - permission to file additional documents/facts/annexures and IA No. 42640/2025 - permission to file lengthy list of dates)

> *"In this matter, several issues and questions have been raised for consideration. Notably, the scope and ambit of the order passed by the learned single Judge of the High Court of Delhi dated 26.10.2024 is under scrutiny**, particularly in the light of the ongoing proceedings concerning oppression and mismanagement before the National Company Law Tribunal1/ National Company Law Appellate Tribunal2, which are currently seized of the matter.** The primary prayer in the writ petition pertains to the alleged inaction or failure on the part of the Reserve Bank of India3 in fulfilling its obligations. However, it is pertinent to note that the interim directions issued by the learned Judge appear to address and adjudicate all issues and contentions inter se the parties, including those that are sub-judice before the NCLT/NCLAT and the RBI.*
>
> *Issue notice, returnable in the week commencing 14.04.2025.*
>
> *Notice is accepted by Mr. Sahil Tagotra, learned counsel, who is present in Court on advance notice/caveat for respondent No. 1.*
>
> *Hence, notice need be served on the said respondent.*
>
> *Respondent No. 2, RBI, is represented upon notice being issued to it by this Court, vide order dated 17.02.2025.*

Notice shall be served upon the unrepresented respondents by all modes, including dasti, upon steps being taken within ten days from today.

As an interim measure, the following directions are issued:-

(i) There shall be stay of operation of the directions issued in the order dated 23.10.2024 passed by the learned single Judge in W.P.(C) No. 9877/2024, which supersedes the Board of Directors of Exclusive Capital Limited and appoints an Interim Committee of Administrators4. For the time being and till the date of this order, the payments to be made to the ICA, as per the said order, shall be borne by the writ petitioner.

(ii) The orders passed by the NCLAT in relation to the appointment of the Observer, including the directions and powers given to such Observer, shall, however, continue to operate.

(iii) ***Till the next date of hearing in the present special leave petition, we find it appropriate to direct that Exclusive Capital Limited shall continue with its day-to-day business activities. However, it shall not enter into any financial transaction exceeding ₹10,00,000/- (Rupees Ten Lakhs only) without prior notice to the Observer. If the Observer deems it appropriate, he may bring the details of such transaction to the notice of the NCLT, where proceedings under Section 242 of the Companies Act, 2013, are pending. The NCLT may, thereupon, pass appropriate orders.***

(iv) The proceedings before the RBI, pursuant to its show-cause notice and in view of the liberty granted by this Court,

vide order dated 17.02.2025, shall continue and appropriate orders shall be passed, preferably within a period of four weeks from today.

(v) The observations recorded in the order passed by the learned single Judge and in the impugned judgment will not influence the RBI when it takes a decision. The RBI shall also not be influenced by this order, granting stay. It shall take an independent decision on the merits of the matter and proceed in accordance with law.

(vi) ***Liberty is granted to the writ petitioner and the shareholders, who have moved the NCLT, to move an application before the NCLT/NCLAT seeking appropriate directions. If any such application is filed, the same will be considered and decided in accordance with law,*** *without being influenced by the impugned judgment, including the order of the learned single Judge and the present order, granting stay.*

(vii) ***The proceedings before the NCLT/NCLAT may continue. It will be equally open to the petitioner before us, who is the respondent before the NCLT and the petitioner before the NCLAT, to contest/pursue the proceedings."***

(Emphasis supplied)

55. From above, we note that this Appellate Tribunal vide order dated 22.05.2024 directed status quo of the impugned order and by order dated 31.05.2024, this Appellate Tribunal modified its previous order dated 22.05.2024 and changed the status of the Administrator to the Observer. This Appellate

Tribunal mandated Observer to enquire into siphoning of funds and preside over the board meeting of the company and also restrained the company from alienating any of its assets and directed that no major decision to be taken by the company in the meantime.

56. We also note that this Appellate Tribunal order dated 23.07.2024 (quoted earlier) reaffirmed the mandate to the Observer. The same (this Appellate Tribunal's order dated 23.07.2024) was confirmed by the Hon'ble Supreme Court in its order dated 02.12.2024 (quoted earlier) passed in Civil Appeal bearing Diary No. 45598 of 2024 and against order dated 24.02.2025 passed in SLP (C) Nos. 4534, 4349 and 4540 of 2025, giving detailed interim reliefs.

57. We also take into consideration that this Appellate Tribunal vide order dated 16.12.2024 (quoted earlier) had directed the company to inform the Observer of any transaction exceeding of Rs. 25 Lakhs for which prior concurrence of Observer was made necessary, which was slightly modified by the Hon'ble Supreme Court of India vide order dated 24.02.2025 (quoted earlier) restricting the management further from entering into any transaction exceeding of Rs. 10 Lakhs without prior notice to the Observer as against Rs. 25 Lakh allowed by this Appellate Tribunal earlier.

58. Thus, the orders of this Appellate Tribunal and the Hon'ble Supreme Court were in nature and with intend to maintain general status quo in the company before the judicial order is finally pronounced by the Tribunal regarding the original CP No. 48/ND/2024 which is still pending for final adjudication of the Tribunal.

59. We are also mindful of the significant fact that the Hon'ble Supreme Court's own order dated 24.02.2025, reproduced in the Impugned Order itself, expressly records at Direction: -

> *"(vi) liberty is granted to the writ petitioner and the shareholders who have moved the NCLT, to move an application before the NCLT/NCLAT seeking appropriate directions, and that any such application, if filed, would be considered and decided in accordance with law, without being influenced by the impugned judgement, including the order of the learned single judge and the present order, granting stay."*
>
> *(Emphasis Supplied)*

60. We again note that the Direction by Hon'ble Supreme Court in (vii) further clarifies that: -

> *"the proceedings before the NCLT/NCLAT may continue. It will be equally open to the petitioner before us, who is the respondent before the NCLT and the petitioner before the NCLAT, to contest/pursue the proceedings."*
>
> *(Emphasis Supplied)*

These directions were passed by Hon'ble Supreme court, in spite the fact that, the Company Petition No.48/ND/2024 has been disposed of on 15.05.2024 by the Tribunal and the appeals (Company Appeal AT(INS) No. 161 of 2024 and

Company Appeal AT(INS) No. 162 of 2024) therefrom were pending before this Appellate Tribunal. The Hon'ble Supreme Court's own order therefore contemplated and allowed the suitable application before the NCLT/NCLAT seeking appropriate directions. We take note that in this background, the application (I.A. No. 115/2025) was filed by the Respondents before the Tribunal. The Appellants argued before us that it could not have been entertained by the Tribunal and that the Tribunal assumed a jurisdiction it did not possess. We find this argument of the Appellants not logical. We are of the view that the Tribunal acted precisely within the four corners of what the Hon'ble Supreme Court had itself directed.

61. It can also be argued that the doctrine of functus officio is not a mechanical bar and it yields where the proceeding, though nominally disposed of, remains alive through pending appellate challenge and where a superior court has, in the exercise of its plenary jurisdiction, directed that ancillary or protective applications may be entertained by the very forum, said to have become functus officio.

62. In this connection we would like to take into consideration the relevant paragraph of the judgement passed by the Hon'ble Supreme Court of India in ***SBI v. S.N. Goyal,*** *(2008) 8 SCC 92* which reads as under:

“.....

It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage an authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Vol. 2, pp. 1946-47) gives the following illustrative definition of the term “functus officio”:

“Thus, a judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision.”

Black's Law Dictionary (6th Edn., p. 673) gives its meaning as follows:

“Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority.”

We may first refer to the position with reference to civil courts. Order 20 of the Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand *writer [if the Judge is specially empowered (sic by the High Court) in this behalf]. The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by Section 152 or on review. Thus, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. <u>Therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment</u> (subject to Section 152 and power of review). The position is different with reference to quasi-judicial authorities. While some quasi-judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi-judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting* *in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. The order dated 18-1-1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the appointing authority became functus officio when it signed the note dated 18-1-1995.*

<u>Let us next consider whether the decision taken on 18-1-1995 was a final decision. A careful examination shows that the order dated 18-1-1995 was intended only to be tentative and not final.</u> Firstly, the said decision was not communicated to the respondent, nor was any letter or order issued to the respondent imposing the penalty mentioned in the order dated 18-1-1995. Secondly, the appointing authority by letter dated 2-2-1995 (Ext. P-23) informed the Chief Vigilance Officer of the Bank about the enquiry against the respondent, his decision accepting the findings of the enquiry officer, and the proposal to show leniency by imposing only a punishment of reduction of pay by four stages. The Chief Vigilance Officer sent a reply dated 7-2-1995 (Ext. D-2) wherein he observed that "by pocketing the money of the customers Shri Goyal has exposed the Bank's faith reposed in him" and there was no ground for showing leniency. He also expressed the view that the respondent deserved a more severe punishment and requested the appointing authority to re-examine whether the respondent

should be continued in the post. Thereafter the disciplinary authority reconsidered the entire issue again and put up another note dated 23-3-1995/2-5-1995 to the appointing authority proposing the punishment of removal from service. After considering the said recommendation, the appointing authority passed the following order on the said note on 3-5-1995:

"On a dispassionate and objective evaluation of the facts, circumstances of the case, inquiry proceedings and evidence available, I concur with the recommendations of the disciplinary authority mentioned at Serial No. 4 of the note and have come to the conclusion that the penalty of 'removal from Bank's service' proposed to be inflicted on Shri S.N. Goyal, Officer JMGS I, is just and appropriate and I, therefore, order imposition of this penalty on the official."

It is thus clear that on 18-1-1995, the appointing authority had only tentatively approved the proposal of the disciplinary authority that a lenient view be taken by imposing a penalty of reducing the pay by four stages in the timescale; and that on 3-5-1995, a final decision was taken in regard to the penalty and that final order was communicated to the respondent as per letter dated 30-6-1995. <u>Therefore, the contention that the appointing authority had earlier passed a final order on 18-1-1995 and had become functus officio and therefore, it could not change the said order dated 18-1-1995 is liable to be rejected."</u>

(Emphasis Supplied)

63. This makes it clear that when any order/judgement are passed which are Interim in nature, the Court/Tribunal does not become functus officio.

64. Based on the above discussion, we hold that Issue No. 1 is answered against the Appellants.

Issue No. 2: Whether the Tribunal lacked jurisdiction to pass the Impugned Order in light of the Hon'ble Supreme Court's order dated 24.02.2025 in the pending SLPs?

65. The Appellants argued that jurisdiction cannot be conferred on the tribunal by judicial order where none exists under statute, and that the Tribunal erroneously read the Hon'ble Supreme Court's order as such a conferral.

We find that this argument misconceives the true effect of the Hon'ble Supreme Court's order dated 24.02.2025 (noted in detail earlier). The present case involves no creation of fresh jurisdiction. The Tribunal's jurisdiction over matters of oppression and mismanagement concerning the company, already exists and is statutorily conferred by Sections 241, 242 and 244 of the Companies Act, 2013, the very provisions under which C.P. No. 48/ND/2024 itself was filed. The Hon'ble Supreme Court's order dated 24/2/2025, did not purport to hand the Tribunal a jurisdiction alien to it as it merely granted liberty to parties to invoke, in an appropriate case, jurisdiction the Tribunal already possessed under its parent statute, and directed that any such application be decided "in accordance with law", i.e., subject to the Tribunal independently satisfying itself on merit of the application.

66. We also noted that Section 242(4) of the Companies Act, 2013 empowers the Tribunal to make any interim order it thinks fit for regulating the conduct of a company's affairs upon such terms as appear to it just and equitable, and the Tribunal's general procedural powers under Rule 11 of the NCLT Rules, 2016, reinforce that the Tribunal retains ancillary and protective jurisdiction in aid of proceedings that remain, in substance, alive by reason of pending appellate challenge.

Issue No. 2 is accordingly answered against the Appellants.

67. Issue No. 3: Whether, in any event, the Impugned Order calls for this Appellate Tribunal interference?

68. The Impugned Order is, as noted earlier, at the outset, is a short-duration, procedural order preserving status quo for limited issues i.e. restraining the holding of two AGMs pending the next date of hearing, which was passed in circumstances where the Tribunal was confronted, on short notice, with a Supreme Court order observing that the company "continue with its day-to-day business activities" while placing a monetary ceiling on unsupervised transactions and keeping the Observer's powers operative.

In this background, we are of prima facie of opinion that Restraining two AGMs by the Tribunal which were called by the Company on a single day, arguably itself an unusual convening admitted to require scrutiny, pending the filing of a reply, cannot be said to be arbitrary or perverse. We are of opinion that this Appellate Tribunal ought not to interfere with a discretionary and an interim order of the Tribunal, unless the discretion has been exercised arbitrarily in complete disregard of settled principles of law. No such infirmity is demonstrated here. On the contrary, the Impugned Order tracks the letter and spirit of the Hon'ble Supreme Court's order dated 24.02.2025, preserves the status quo ante pending a considered adjudication, and expressly leaves every substantive contention, jurisdictional and factual, open for determination.

Issue No. 3 is answered against the Appellants.

Conclusion

69. A plain reading of the Impugned Order shows that the Tribunal did not grant any of the substantive reliefs prayed for in the Suspension Application namely suspension of the Board of Directors, handing over of management to the Observer, or appointment of a local commissioner. The Tribunal confined itself mainly to (i) directing that the 29th and 30th AGMs scheduled for 18.04.2025 not be held till the next date of hearing, (ii) making an observation regarding the Corporate Debtor's claim before the Resolution Professional of Sulojoy Realty Pvt. Ltd., and (iii) listing the application for further hearing on 30.04.2025. The Tribunal expressly recorded that it "would be examining the [reliefs claimed] only after receipt of the reply from the Respondents." (the Appellants herein)

70. The Impugned Order is thus, in substance and form, seems partly an interim & procedural order, in preserving status quo for a short duration pending further hearing, and not a final or even a substantive interlocutory adjudication on the merits of the pending Application. We also observe that the Impugned Order, being a short-duration, interlocutory, status-quo order, leaves all substantive contentions open and therefore no case for this Appellate Tribunal's interference is made out.

71. In view of the above findings, Appeal fails as being devoid of any merit and stands rejected. No order as to cost. Pending IA, if any, stands closed.

72. It is, however, made clear that all contentions of the parties are left open to be urged before the Tribunal at the time of final adjudication of I.A. No. 115/2025, and nothing in these findings shall be construed as an expression of opinion on the merits of the underlying Suspension Application.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sim