NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No.105 of 2018

[Arising out of Order dated 16.02.2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.259/2017 in IA No.16/2016 in TP 120 of 2016]

IN THE MATTER OF:

Peoples General Hospital Pvt. Ltd.
Through its Director, I H Siddiqui
6, Malviya Nagar
Bhopal – 462 003

…Appellant
(Original Respondent No.1)

Versus

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

Office for Correspondence
Regarding this Appeal
C/o Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

…Respondent No.1
(Original Petitioner)

2. Suresh Narayan Vijay
R/o Bungalow No.4, Vijaydwar,
Near Peoples Campus, Bhanpur,
Bhopal – 462 037 (MP)

…Respondent No.2
(Original Respondent No.2)

Company Appeal (AT) No.107 of 2018

[Arising out of Order dated 16.02.2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.260/2017 in IA No.19/2016 in TP 122 of 2016]

IN THE MATTER OF:

Peoples International & Services Pvt. Ltd.
Project Office, People's Campus,
Karond-Bhanpur Bye-pass
Village Raslakhedi, Tahsil Huzur,
Bhopal, (MP): 462037 …Appellant

Versus

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

Office for Correspondence
Regarding this Appeal
C/o Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

…Respondent No.1

2. Suresh Narayan Vijay
R/o. Bungalow No.4, Vijaydwar,
Near Peoples Campus,
Bhanpur Byepass Road,
Bhopal – 462 037 (MP)

…Respondent No.2

Company Appeal (AT) No.108 of 2018

[Arising out of Order dated 16.02.2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.261/2017 in IA No.23/2016 in TP 125 of 2016]

IN THE MATTER OF:

PGH International Private Limited,
Through its authorized Signatory
Col. Ashok Kumar Khurana (Retd.)
Peoples Campus, Bhanpur,
Bhopal – 462037 (MP)

…Appellant

Versus

1. Ashok Kumar Khosla,
S/o Shri Joginderlal Khosla
R/o.44, Landing Court, Moorestown,
New Jersey 08057, USA

Office for Correspondence
Regarding this appeal
C/o Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

…Respondent No.1

2. Suresh Narayan Vijay
Bungalow No.4, Vijaydwar,
Near Peoples Campus,
Bhanpur Byepass Road,
Bhopal – 462 037 (MP)

…Respondent No.2

Company Appeal (AT) No.110 of 2018

[Arising out of Order dated 16.02.2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.193/2017 in IA No.17/2016 in TP 120 of 2016]

IN THE MATTER OF:

Suresh Narayan Vijay
Bungalow No.4, Vijaydwar,
Near Peoples Campus,
Bhanpur Byepass Road,
Bhopal – 462 037 …Appellant

Versus

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

Office for Correspondence
Regarding this Appeal
C/o Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

...Respondent No.1

2. M/s. People's General Hospital Pvt. Ltd.
Through its Director, I H Siddiqui
6, Malviya Nagar
Bhopal – 462 003

...Respondent No.2

Company Appeal (AT) No.111 of 2018

[Arising out of Order dated 16.02.2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.194/2017 in IA No.19/2016 in TP 122 of 2016]

IN THE MATTER OF:

Suresh Narayan Vijay
Bungalow No.4, Vijaydwar,
Near Peoples Campus,
Bhanpur Byepass Road,
Bhopal – 462 037

...Appellant

Versus

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

Office for Correspondence
Regarding this Appeal
C/o Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

...Respondent No.1

2. Peoples International & Services Pvt. Ltd.
Project Office, People's Campus,
Karond-Bhanpur Bye-pass
Village Raslakhedi, Tahsil Huzur,
Bhopal, (MP): 462010

...Respondent No.2

Company Appeal (AT) No.112 of 2018

[Arising out of Order dated 16.02.2018 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in IA No.192/2017 in IA No.23/2016 in TP 125 of 2016]

IN THE MATTER OF:

Suresh Narayan Vijay
Bungalow No.4, Vijaydwar,
Near Peoples Campus,
Bhanpur Byepass Road,
Bhopal – 462 037

...Appellant

Versus

1. Ashok Kumar Khosla,
S/o Joginder Lal Khosla
R/o.44, Landing Court, Moorestown,
New Jersey 08057, USA

Office for Correspondence
Regarding this appeal
C/o Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

...Respondent No.1

2. M/s. PGH International Private Limited,
People's Campus, Bhanpur,
Bhopal – 462037

...Respondent No.2

(In Company Appeal (AT) Nos.105, 107 & 108 of 2018)

Present: Shri S.K. Batra, PCS for the Appellant

Shri Anurag Sharma and Shri Sunil Singh Parihar, Advocates for the Respondents

(In Company Appeal (AT) Nos.110, 111 & 112 of 2018)

Present: Shri Amalpushp Shroti, Advocate for the Appellant

Shri S.K. Batra, PCS for Respondent No.2

Shri Anurag Sharma and Shri Sunil Singh Parihar, Advocates for the Respondents

J U D G E M E N T

A.I.S. Cheema, J. :

1.A Company Appeal 105 of 2018 is arising out of Impugned Order passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad ('NCLT', in short) dated 16th February, 2018 passed in IA No.259 of 2017 in IA 16 of 2016 in TP No.120 of 2016 whereby the application filed by the Appellant under Section 420(2) of the Companies Act, 2013 ('Act', in brief) has been dismissed.

1.B Company Appeal 107 of 2018 is arising out of Impugned Order passed by NCLT dated 16th February, 2018 passed in IA No.260 of 2017 in

IA 19 of 2016 in TP No.122 of 2016 whereby the application filed by the Appellant under Section 420(2) of the Companies Act has been dismissed.

1.C Company Appeal 108 of 2018 is arising out of Impugned Order passed by NCLT dated 16th February, 2018 passed in IA No.261 of 2017 in IA No.23 of 2016 in TP 125 of 2016 whereby the application filed by the Appellant under Section 420(2) of the Companies Act has been dismissed.

1.D Company Appeal 110 of 2018 is arising out of Impugned Order passed by NCLT dated 16th February, 2018 passed in IA No.193 of 2017 in IA No.17 of 2016 in TP No.120 of 2016 whereby the application filed by the Appellant under Section 420(2) of the Companies Act has been dismissed.

1.E Company Appeal 111 of 2018 is arising out of Impugned Order passed by NCLT dated 16th February, 2018 passed in IA No.194 of 2017 in IA No.19 of 2016 in TP 122 of 2016 whereby the application filed by the Appellant under Section 420(2) of the Companies Act has been dismissed.

1.F Company Appeal 112 of 2018 is arising out of Impugned Order passed by NCLT dated 16th February, 2018 passed in IA No.192 of 2017 in IA No.23 of 2016 in TP 125 of 2016 whereby the application filed by the Appellant under Section 420(2) of the Companies Act has been dismissed.

2. We have heard counsel for the parties in these matters. Both the counsel agree and state that in NCLT between the parties, 3 petitions – TP 120/2016, TP 122/2016 and TP 125/2016 are pending and present Appeals are arising out of similar applications filed by original

Respondents raising grievances relating to limitation and other issues and on rejection of the said applications, when application under Section 420(2) of the Companies Act was filed, the same was rejected and present 6 Appeals have arisen. Both the counsel agree that in all the matters, similar facts are involved and same question of law is arising and thus, all these appeals may be considered and disposed together. Counsel for both sides agreed and they have argued these Appeals referring to the record of Company Appeal 105 of 2018 as the lead case. Both the counsel agree that in these matters, similar worded Impugned Orders are there and thus these Appeals can be and may be decided with same Order.

3. Referring to the record of Company Appeal 105/2018, we are proceeding to decide these Appeals.

4. Copy of the Company Petition TP 120/2016 is at Annexure A-2 (Page 59). The original Petitioner is M/s. Alliance Industries Limited who filed the petition through Director, Ashok Kumar Khosla against Respondent No.1 – M/s. Peoples General Hospital Private Limited (present Appellant). Respondent No.2 – Suresh Narayan Vijay is also Respondent in the Company Petition. There are 3 other Respondents but they are not made party here in the Appeal. In the matters - IA 16/2016, 17/2016 and 18/2016 came to be filed by Respondents raising grievances, inter alia, regarding limitation and delay and latches. The learned NCLT after hearing the parties, decided the IAs vide Order dated 29th May, 2017. Copy of the

said Order is at Annexure A-6 (Page – 185). With regard to limitation and delay and latches, in this Order dated 29th May, 2017, NCLT mentioned as under:-

> "5. Limitation and delay latches in filing petition:-
>
> It is stated in the application that on 24.01.2011 petitioner asked for clarification with regard to diversion of funds to the trust and thereafter only on 08.01.2015 this petition is filed alleging oppression and mismanagement. It is stated that no action was taken by the petitioner between 2011 and 2015 and, therefore, the petition is barred by limitation. It is also stated that the delay in filing the petition is fatter and the petition is disentitled for the discretionary reliefs sought for to invoke equitable discretion of the Tribunal under section 402 of the Companies Act, 1956 or 242(2) of the Companies Act, 2013.
>
> 6. There is no limitation period prescribed under the Companies Act, 1956. The period of limitation as prescribed under the Companies Act, 1956 is only applicable to the appeals made to Appellate Tribunal. Section 433 of the Companies Act, 2013 which came in to effect on 01.06.2016 plays on Provisions of Limitation Act are applicable to the proceedings under the Companies Act, 2013.
>
> 7. It is relevant to mention here that this petition was filed in January 2015 under Section 397 and 398 of the Companies Act, 1956. Thereafter, no period of limitation is provided under section 398 and 399 of the Companies Act. This petition being filed before 01.06.2016 under Section 397 and 398, no period of limitation is there for filing this petition.
>
> 8. As can be seen from the sequence of events narrated in the reply filed by the petitioner last cause of action was on 26.03.2014 and 05.04.2014 when fresh settlement discussion took place. As can be seen from the annexures there were settlement talks on 10.10.2013, 23.06.2014 and 05.04.2016.

> Moreover, the petitions contain events that commenced from 2003 to 2014. Therefore, petitioner allege that it is continuous act of oppression and mismanagement. Although no period of limitation is provided several instances have been stated in the petition which were promptly denied by the respondents in their reply. The question of limitation, if at all there, it is applicable and it can become mixed question of facts and law. Therefore, it is held that no limitation is provided for filing this petition in January, 2015 under Section 397 and 398 of the Companies Act, 1956. Even assuming that limitation act is applicable for the rights of facts and circumstances it assumes it would be a mixed question of facts and law.
>
> 9. Coming to the aspect of delays and latches unless and until the events relegation made by the parties are closely scrutinised by making reference to the documents, context of the parties and consequences of the actions, it is not possible to judge whether the delay and latches are there on the part of the petitioner or not and it is voluntary delay or delay in action on account of any other factor can be judged only after initial hearing of the matter."

5. The other grievances raised (with which we are not concerned here) were also dealt with and learned NCLT passed Orders that it did not see any ground to dismiss the original Petition without conducting a final hearing. Consequently, it dismissed the IAs.

6. It appears that Appellants did not go in appeal against above Orders. Appellants later filed IAs in the Company Petitions. In Company Appeal 105 of 2018, copy of the IA is at Annexure A-7 which was IA 259/2017 in IA 16/2016 in TP 120/2016 in old CP 24/2016. The title of

the application (as can be seen at Page – 194) reads as under:-

> "APPLICATION ON BEHALF OF RESPONDENT NO.1 UNDER SECTION 420(2) OF THE COMPANIES ACT, 2013 READ WITH RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 SEEKING REVIEW OF THE ORDER, DATED 29TH MAY, 2017."

6.1 By the application, the Appellant referred to applications which had been dismissed on 29th May, 2017 and claimed that in the Order dated 29th May, 2017, the NCLT had not considered oral arguments on delay and latches as were advanced as well as written submissions and the rulings relied on were not discussed. The Appellants claimed that because of this, the Review Application was being filed for grounds mentioned. The prayer stated that in view of the aforesaid, the Tribunal should recall the Order dated 29.05.2017 and pass fresh Orders, after considering the oral arguments as well as written submissions which had been filed.

7. The learned NCLT heard the parties and passed the Impugned Orders dated 16th February, 2018. In Company Appeal 105 of 2018, copy of the Order is at Annexure A-1. Inter Alia, NCLT held that considering the provisions of law, it had no power to review its own Orders. It found that it could correct "mistake apparent from the record" but considering the facts of the matter and the law, although it had not referred to the Judgements relied on, NCLT held that there was no mistake apparent from the record and so it went on to dismiss the IAs which had been filed.

8. The present Appeals are filed being aggrieved by such Impugned Orders passed in these matters. The learned counsel for the Appellants in these matters submitted as under:-

It is stated that the Company Petitions were initially filed in 2015 before Company Law Board and when NCLT was established in Ahmedabad, the Company Petition came to be transferred in Ahmedabad in 2016. Referring to the facts of CA 105/2018, it has been argued that the Appellant filed IA 16/2016 challenging maintainability on the ground that the Petition suffered from gross delay and latches. The Petitioner alleged acts of oppression and mismanagement of 2001 – 2006 and the complaint was being made after a period of almost 10 years. The counsel claimed that the Respondent No.1 (in Appeal) filed Reply to the IA 16/2016 which had been filed, and in the Reply gave certain admissions like the alleged illegal transfer of investment to Trust arose between 2001 – 2006; cause of action in alleged buy-back of shares by Respondent No.2 – Appellant arose on 01.09.2006; cause of action on account of failure to arrive at settlement arose in 2010, 2013 and 2014 and cause of action on account of Notice of requisition of EOGM, rejection thereof arose in 2014. Based on this, the learned counsel for the Appellant submitted that the Appellant had in the IA 16/2016 claimed that the Company

Petition has to be filed in reasonable time and even under the old Act, 3 years was the period specified as can be seen in the Judgement of **"Praveen Shankaralayam vs. M/s Elan Professional Appliances Pvt. Ltd. & Ors."** - 2016 SCC Online NLCT 85. According to the counsel, the Appellants relied on this Judgement to claim that the Petition was hopelessly delayed and deserved to be dismissed. The Appellants had also relied on the case of (1) "**Esquire Electronics vs. Netherlands India Communications Enterprises Ltd.**" - 2016 SCC Online NCLT 71 and (2) **"Sanjay Agarwal and another vs. M/s. Meghalaya Finlease Pvt. Ltd. and others"** – 2017 SCC Online NCLT 28 on the principles of delay. According to the learned counsel, considering the Reply field by the original Petitioners to IA 16/2016 and their admissions in the Reply, it was apparent that the Company Petitions were delayed beyond 3 years and only because there were successive failures of settlement in 2013 and 2014 would not justify the delay and the Company Petitions should have been dismissed. The counsel submitted that the Appellants had filed written submissions like Annexure A-5 – Page 155 but NCLT did not consider them and when the application under Section 420(2) of the new Act was filed, it wrongly dismissed the same.

The learned counsel for the Appellants considering the reasonings recorded by the NCLT in the Impugned Order, accepted that NCLT does not have power to review but according to him, the present matter would fall in the category of "mistake apparent on the record" and the Order should have been recalled. When the attention of the learned counsel for the Appellants at the time of arguments was drawn to the application (Annexure A-7) where it is mentioned that the Appellants were seeking "review", the learned counsel stated that the substance of the application mattered and not the form. According to him in the prayer, the request was only for "recall" of the Order and thus, the application should have been treated not as seeking review but recall due to mistake apparent on the face of record. The counsel referred to para – 24 of the Impugned Order to submit that the NCLT should not have discussed the Judgement in the matter of "Praveen Shankaralayam vs. M/s Elan Professional Appliances Pvt. Ltd. & Ors." in present Impugned Order and the correct procedure would have been to first set aside the Order dated 29th May, 2017 and then discuss these Judgements.

9. Against this, the learned counsel for the Respondents submitted that under Section 420(2), only mistake can be corrected and non-consideration of a Judgement relied on or referred in the written

arguments on the question of limitation, which is always a mixed question of law and facts, cannot be said to be error apparent on face of record. It has been argued that for considering question of limitation, one cannot go into the defence and Replies and the original Company Petition itself has to be kept in view. It is argued that the original Company Petition was never questioned when it was filed and it is not the case of the Appellants that the original Company Petition read as a whole would show that the petition was time barred. It is argued that there were various instances pointed out in the Company Petition running up to the year of 2015 when efforts on settlements failed and the learned NCLT has accepted in the Order dated 29th May, 2017 that the case put up by original Petitioners related to continuous acts of oppression and mismanagement. It has been argued by the learned counsel for Respondents that the Appellants are trying to show by referring to the Judgements relied on by them and their written arguments to say that if the same would have been considered along with the facts of the present matter, the Company Petitions should have been held to be time barred. The argument is that if one has to indulge in such exercise, it cannot be said to be error apparent on the face of record. Thus according to him, there is no reason to allow these Appeals and the Impugned Orders passed by NCLT are correct.

10. Having heard the counsel for both sides, we have gone through the record and Judgements referred to and relied on by the counsel for both sides. The application under Section 420(2) of the new Act (Annexure A-7)

was clearly filed seeking "review" of the Order dated 29th May, 2017. Going through the application, it is clear that the Appellants were referring to their written arguments and the Judgements they relied on to make out a case that if the same would have been considered, the original Company Petitions deserved to be dismissed, as non-consideration of the oral and written arguments and the Judgements referred to in the written submissions had caused miscarriage of justice. In para – 5 of the application, the Appellants mentioned "therefore this review application on the following among other grounds". The application then referred to the grounds and the prayers said that "in view of the aforesaid", the Order dated 29th May, 2017 deserved to be recalled and "fresh orders" were required to be passed. In form and substance thus the application was to review and recall Orders and to pass fresh Orders considering the arguments and Judgements referred.

11. The learned NCLT in the Impugned Order referred to Sub-Section (2) of Section 420 of the new Act which reads as under:-

> "The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act."

12. The learned NCLT also referred to Rule 9 of NCLT Rules which

reads as under:-

> "(2) The Tribunal may, at any time within two years from the date of the order with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties;"

12.1 NCLT considering these provisions and making reference to Judgement in the matter of "**Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch, South Exchange Limited reported in (2008) 14 SCC 171,** which had been cited before it, referred to para – 25 of that Judgement where Hon'ble Supreme Court discussed the Judgement in the matter of "Patel Narvi Thakersh vs. Pradyuman Singhji reported in 1971 3 SCC 844 and extracted the following portions:-

> "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to [our] notice from which it could be gathered that the Government had power to review its own order. If the government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

13. On such basis, the learned NCLT concluded that power of review is not an inherent power and is required to be conferred either specifically or by necessary implication.

14. NCLT concluded that it did not have the power to review its Order. We find ourselves in agreement with such reasonings recorded by NCLT

for concluding that it did not have the power to review even by invoking the inherent powers. The learned counsel for the Appellants has now accepted that NCLT did not have power of review of its own Orders. Looking to the application which had been filed (Annexure A-7) which had in form and substance sought review, NCLT should have rejected the application once it concluded that it did not have power of review. We are not impressed by the argument of the learned counsel for the Appellants that the reference to the word "review" in application on Annexure A-7 was by mistake and in substance, the application was only seeking for recall of the Order due to error apparent on the face of record.

15. At the time of arguments, we found the counsel for Appellant himself strenuously trying to make point by referring to the written arguments which had been submitted and the Judgements which had been cited, which according to the Appellants had not been taken note of when Order dated 29th May, 2017 was passed. Apparently, it was strenuous exercise to show that if the Judgements relied on had been considered, the Order dated 29th May, 2017 could have been different. The application A-7 was in form and substance seeking recall of the Orders because the review was being sought.

16. NCLT, however, went on to consider the wordings of Sub-Section (2) of Section 420 and proceeded to discuss if the Appellants made out a case of "mistake apparent from the record" and after discussing the

material, concluded that there was no mistake apparent from the record. Before us also, the main reliance of the learned counsel for the Appellants is Judgement in the matter of "Assistant Commissioner, Income Tax" (Supra). Relying on this Judgement, it is claimed that in that matter, the Income Tax Appellate Tribunal had held that authorities of the Income Tax were right in not granting exemption to the assesse regarding liability to pay tax and had dismissed the appeal but when later the Judgement of the High Court was pointed out, which was a binding decision of superior Court which had held to the contrary that the assesse, a charitable institution, was exempted, the Tribunal corrected its judgement holding that it was error apparent on the face of record. It is argued that Section 245(2) of the Income Tax Act is also similar to Section 420(2) of the Companies Act. It is argued that this was upheld by Hon'ble Supreme Court also. In present matter also, it is argued, if the Judgements were not considered, there is error apparent on the face of record. The learned NCLT in Impugned Order, referred to the above Judgement of Assistant Commissioner, Income Tax discussed as under:-

> "20. In that case Income-Tax Appellate Tribunal, Ahmedabad without taking into consideration the decision of Hon'ble High Court of Gujarat in Hiralal Bhagwati v. CIR reported in (2000) 246 ITR 188 wherein the Hon'ble High Court of Gujarat held that the 'trust' could claim such exemption, passed order since it was not brought to its notice when the order was passed. Subsequently when assesse came to know about the judgement of Hon'ble High Court of Gujarat wherein it is held that 'trust' is entitled for exemption, brought the same to the notice of the Tribunal by filing application

> under Section 254 (2) of the IT Act to correct the order stating that it is a mistake apparent from the record. Income-tax Appellate Tribunal corrected the mistake. Revenue Department carried the matter to Hon'ble High Court of Gujarat. Hon'ble High Court upheld the order of Income-tax Appellate Tribunal in recalling the order. Revenue Department carried the matter to Hon'ble Supreme Court. That is how the matter came up before Hon'ble Supreme Court. Hon'ble Supreme Court held that the decision of Hon'ble High Court of Gujarat on the aspect whether a 'trust' is entitled for certain exemption from income-tax or not is pending in Income Tax Appellate Tribunal and when such decision is not brought to the notice of the Tribunal when the order was passed but brought to the notice of the Tribunal thereafter, then the order passed is a 'mistake apparent from the record'. Hon'ble Supreme Court also upheld that the order of the Tribunal recalling the order."

16.1 The learned NCLT then referred to para – 29 of the Judgement in the matter of Assistant Commissioner, Income Tax where the Hon'ble Supreme Court referred to the Judgement of **"Syed Yakoob vs K.S. Radhakrishnan"** reported in AIR 1964 Supreme Court 477. The portion extracted by the Hon'ble Supreme has been reproduced by NCLT in its judgement to discuss as to what would be an error of law which is apparent on the face of record and which can be corrected by a writ but not an error of fact, however grave it may appear to be. We will reproduce para – 30 of the Judgement in the matter of Assistant Commissioner, Income Tax for beneficial reading. In para – 30, Hon'ble Supreme Court held as under:-

> "30. In our judgment, therefore, a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be apparent on

> the face of the record if one has to travel beyond the record to see whether the judgment is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no Court would permit it to remain on record. If the view accepted by the Court in the original judgment is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record."

17. It is apparent from above that an error apparent on the face of record means an error which strikes on mere looking and does not need long drawn out process of reasonings on points where there may conceivably be two opinions. If the present matter is seen, it cannot be compared with the facts of the matter of Assistant Commissioner, Income Tax. A biding Judgement of the Hon'ble High Court was there which had found Trust entitled to exemption which Judgement had not been noticed by the Income Tax Appellate Tribunal. When the same was brought to the notice of the Tribunal, it accepted that it was error apparent on the face of record. If a Trust is entitled to exemption has been held by the High Court, in the jurisdiction of the High Court in view of Article 227 of the Constitution of India, it would be the applicable law. It would have to be applied universally in that jurisdiction and pointing out the assesse to be Trust would be enough. However, in the matter of delay and latches, it is always mixed question of law and facts. Here the Judgement passed was by another Bench of NCLT in the matter of "Praveen Shankaralayam vs.

M/s Elan Professional Appliances Pvt. Ltd. & Ors." It had remained to be discussed in the Order dated 29th May, 2017. It was not something which had laid down a law of universal application. The Judgement discussed the provisions of law, binding precedents and discussed the facts of that matter to hold the Petition therein as time barred. Thus, we are not impressed by the arguments that only because the NCLT in Order dated 29th May, 2017 had not discussed the said Judgement of "Praveen Shankaralayam vs. M/s Elan Professional Appliances Pvt. Ltd. & Ors." it could be said to be something which is error apparent on the face of record. In para – 24 of the Impugned Order, NCLT observed:-

> "24. A perusal of order dated 29.05.2017 on the aspect of delay and latches goes to show that it is observed that alleged acts complained is in the nature of continuous oppression and mismanagement. This Tribunal also further observed in the order dated 29.05.2017 that unless and until allegations made by the parties are closely scrutinised by making reference to the documents, conduct of the parties and consequences of the actions at the time of final hearing it is not possible to come to a conclusion whether there was delay or latches on the part of the original petitioner and whether it is a voluntary delay or delay in action on account of any other factor. It is settled law that delay and latches are not fatal to the cases unless the delay resulted in grave prejudice to the rights of the parties that were asked to face litigation. It is also settled law that unless the delay amounts to waiver it is not fatal to the case of the petitioner. In that view of the matter this Tribunal needs a detailed examination of the material on record to give a final finding whether there is delay and latches on the part of the petitioner. In fact, in the order dated 29.05.2017, there is no finding that there is no delay and no latches on the part of the petitioner. The finding on such aspect is reserved for final hearing."

17.1 The NCLT then has in the Impugned Order referred to the Judgement in the matter of "Praveen Shankaralayam vs. M/s. Elan Professional Appliances Pvt. Ltd. & Ors." and how unlike the matter of Assistant Commissioner of Income Tax, Rajkot, it was not a matter which laid down any proposition of law which applied irrespective of facts. Although the learned counsel for the Appellant is unhappy that the NCLT in present Impugned Order discussed Judgement in the matter of "Praveen Shankaralayam", claiming that the same should have been done after reversing the Order dated 29th May, 2017, we are not impressed. The NCLT was merely trying to distinguish the Judgement in the matter of Praveen Shankaralayam and Judgement in the matter of Assistant Commissioner, Income Tax which was being made the basis for recall. Same is the fate of the other two Judgements in the matter of "Esquire Electronics" and "Sanjay Agarwal" (supra).

18. Going through the Impugned Judgement of the NCLT, we find that it is very well reasoned and there is no error in the Judgement. The NCLT has rightly concluded that it could not review the Judgement dated 29th May, 2017 and the effort to say that there is error apparent on record to recall the whole Judgement dated 29th May, 2017 and rewrite the same after taking note of the Judgements and arguments Appellants wanted to rely on, was clearly not acceptable. Such exercise cannot be said to be error apparent on the face of record in the set of facts which we have.

19. There is no substance in these Appeals. Each of these Appeals is dismissed with costs quantified at Rs.1 lakh in each appeal to be paid by the respective Appellants to State through Ministry of Corporate Affairs.

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

[Balvinder Singh]
Member (Technical)

New Delhi

8th August, 2018

/rs/nn