

OBSERVATIONS OF HON'BLE PRESIDENT

*In the matter of enquiry relating to the order dated 15.03.2022
passed in MA/61/2021 in CP (IBA)/1099/2019
by the National Company Law Tribunal, Chennai Bench*

*(pursuant to the directions of the Hon'ble National Company Law Appellate Tribunal in
Company Appeal (AT)(Ins) No. 186 of 2022
Order dated: 06 March 2025)*

I have examined the factual aspect submitted by Mrs. Nirmala Vincent, (Retd.) Court Officer, NCLT Principal Bench, together with the records, documents, and materials referred to therein, pursuant to the observation issued by the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT)(Ins) No. 186 of 2022, vide order dated 06.03.2025. I had requested Retd. Court Officer to give me factual record for my convenience.

2. Upon consideration of the factual Report and the documentary material placed on record, the following findings emerge:

A. Listing of Matter on 15.03.2022

- (i) The listing of MA/61/2021 on 15.03.2022 was pursuant to a judicial direction issued by the concerned Bench upon a mention being made regarding the inadvertent non-listing of the matter on 15.02.2022. The Appellant M/s. Asset Reconstruction Company (India) Limited in para 7.23 and 7.24 of the Memorandum of Appeal in Company Appeal (AT)(Ins) No. 186 of 2022 has stated as follows;

"7.23. It is submitted that the Appellant filed its written submission in the Impugned Application, annexed as Annexure A30, and on 18.01.2022, the arguments in the Impugned

Application were heard in part and the same was adjourned to 15.02.2022 for continuation of arguments. The Order dated 18.01.2022 is annexed as Annexure A-31. On 15.02.2022, the Impugned Application was inadvertently not listed before the Hon'ble Adjudicatory Authority and the cause-list for 15.02.2022 is annexed as Annexure A-32.

7.24. It is submitted that, on 15.02.2022, the Advocate for Appellant mentioned the non-listing of the Impugned Application, MA/61/(CHE)/2021, before the Hon'ble Adjudicatory Authority and pursuant to the said request for listing, the Hon'ble Adjudicatory Authority directed the registry to list the impugned Application on 15.03.2022."

- (ii) It is therefore necessary to record, in clear and unequivocal terms, that the Memorandum of Appeal filed before Hon'ble NCLAT by the Appellant itself expressly acknowledges that, upon the inadvertent non-listing of the matter on 15.02.2022, a mention was made before the Bench and, pursuant thereto, the Registry was directed to list MA/61/2021 on 15.03.2022. The Appellant's own pleadings thus unmistakably confirms that the listing of the matter on 15.03.2022 occurred pursuant to a judicial direction on appellants mention. It is therefore evident that any other submission advanced before the Appellate Tribunal by the Appellants Counsel will be contrary to the pleadings contained in the Memorandum of Appeal as above. Therefore, the listing on 15.03.2022 was not improper or irregular. There was no cause raising any issue even as per Appellant conduct.
- (iii) In the face of such a categorical admission in the appeal, the observation of Hon'ble NCLAT that the matter was listed "without any order" is not correct. This view is based on the record requested and taken from the Appellate Tribunal for this

enquiry. The documentary evidence filed before NCLAT leaves no room for any inference that the matter was listed arbitrarily.

B. Case status in the e-filing portal dated 15.03.2022 showing MA/61/2021 to be listed on 25.04.2022.

- (iv) I further find, as borne out from the detailed Factual Report submitted after extensive examination of the case records, registry materials, cause lists, court diary entries, e-portal data, and the statements recorded from the concerned officers and staff of the Tribunal, that only the Interlocutory Applications forming part of Daily Order Categories – 2 and 3 (*as captured in the Factual report Page 16*) were directed to be listed for further hearing on 25.04.2022, whereas the matters included in Daily Order Category – 1, which also comprised MA/61/2021, stood disposed of on 15.03.2022 as infructuous or closed based on the belated memo filed by the Counsel for the Appellant on 21.03.2022. The Appellant Counsel/petitioner before NCLT should have filed the memo then and there. What is the reason for the delay has not been explained. This is one reason for this unwanted controversy.
- (v) The material on record further establishes that, owing to the absence of a regular Court Officer and the reliance on outsourced personnel for updating the e-portal during the relevant period which is immediately after Covid-19 episode, the next date of hearing was inadvertently reflected as 25.04.2022 for all applications listed on 15.03.2022, whereas it should have been for Category 2 and 3 only. The discrepancy was thus the result of

an administrative data-entry error and did not emanate from any judicial direction concerning MA/61/2021. There is no material to hold any procedural impropriety or error in the judicial process.

C. Uploading of the daily order dated 15.03.2022

- (vi) I further find from the records that on 15.03.2022, a total of 34 applications connected with the main petition were listed before the Court. The Court had orally directed the counsel appearing for the respective parties to file memos indicating the status of each application. The belated memo dated 21.03.2022 filed by the Applicant, M/s. Asset Reconstruction Company (India) Limited (ARCIL), reflects compliance with the said direction and records that MA/61/2021 had been listed on various dates, argued, and appropriate orders were sought. The Appellant has to the best of verification of records of NCLAT not filed the said memo dated 21.03.2022 in the documents pertaining to Company Appeal (AT)(Ins) No. 186 of 2022. This could be the cause for this error.
- (vii) It is also evident from the record that, in the meantime, the final order approving the Resolution Plan in IA/460/2021 had already been pronounced on 01.02.2022, wherein the issues relating to MA/61/2021 had been considered in paragraphs 8.3 to 8.5 of the said order. In the Memorandum of Appeal CA(AT)(CH)(Ins) No. 186 of 2022 filed by M/s. Asset Reconstruction Company (India) Limited in para 7.22 it is stated as follows;

7.22. *It is submitted that the primary ground of challenge before this Hon'ble Appellate Tribunal was on account of the findings given at paragraphs 8.3, 8.4 and 8.5 of the afore-said Order dated 01.02.2022 against the Appellant qua the observations made by the Hon'ble Adjudicatory Authority on maintainability of the claims / Form-C made by the Appellant, which were unwarranted and unjustified. By these findings, the Hon'ble Adjudicatory Authority had symbolically dismissed the Impugned Application (MA/61/(CHE)/2021) in an application filed for approval of Resolution Plan. It is submitted that on 09.03.2022 and subsequently on 21.03.2022, this Hon'ble Appellate Tribunal was pleased to pass Orders deferring the implementation of the said Order dated 01.02.2022.*

Hence there was no further orders that is needed to be passed even as per appellants version after 01.02.2022.

- (viii) After directing the parties to file the aforesaid memos, the daily orders relating to the application of Category – 1 would have been finalized and uploaded. Upon perusal of the records, it is seen that ARCIL has already filed an Appeal before Hon'ble NCLAT in Company Appeal (AT) No. 79 of 2022 in respect of the observation made para 8.3, 8.4 and 8.5 (which is pertaining to MA/61/2021) in the resolution plan order dated 01.02.2022, and also the Hon'ble NCLAT vide its order dated 09.03.2022 has deferred the implementation of the Resolution Plan. All facts in relation to MA/61/2021 was very much available in the Memorandum of Appeal. There was no need for NCLT to pass any order on merits. The issue had become infructuous after the plan Approval order 01.02.2022.
- (ix) In the above factual backdrop, MA/61/2021 was disposed of as infructuous on 15.03.2022, since the issues raised therein had already been adjudicated in paragraphs 8.3 to 8.5 of the Resolution Plan order dated 01.02.2022 and admitted by

appellant as recorded in para (vii) above. The subsequent closure order (i.e.) infructuous after receipt of the belated memo dated 21.03.2022, was a formality. In any event, the interval between the date of hearing and the date of uploading of the order, at best can be attributed to the routine administrative process of preparation, transcription, approval, and signature of the order that happens in all courts and particularly in the context of the staffing constraints prevailing during the relevant period, it does not disclose any procedural irregularity whatsoever. This is the case in all Courts and Tribunals. I find no error in this also.

Conclusion:

3. I find that the procedural steps followed by the NCLT, Chennai Bench in relation to the listing, hearing, and disposal of MA/61/2021 were in fully conformity with the established judicial and administrative practices of the Tribunal. The minor discrepancies noticed were administrative in nature and occurred in the backdrop of staffing limitations prevailing during the relevant period post Covid – 19, and do not in any manner impinge upon the integrity, or fairness of the adjudicatory functioning of the Tribunal. The enquiry, therefore, reinforces institutional confidence in the transparency and procedural integrity of the National Company Law Tribunal despite its Infrastructure short comings and grave shortage of regular staff. Nearly 90% of NCLT staff are contractual since inception (i.e.) 2016 till 2026. The Recruitment Rules, 2020 is pending amendment and hence there are very few regular staff. Most of the Officers holding regular post are deputationist and do not have domain knowledge of working of NCLT. This is the status of NCLT as an institution.

4. It is further observed that the Hon'ble NCLAT appears to have proceeded on the basis of the submissions advanced by the Counsel for the

Appellant without verification of the pleadings contained in the Memorandum of Appeal, wherein the Appellant himself had expressly recorded that the listing of MA/61/2021 on 15.03.2022 was pursuant to a judicial direction issued **upon a mention being made by the Appellant**. The position now emerging from the record indicates that the submission made before the Hon'ble NCLAT in this regard was contrary to the Appellant's own pleadings in the appeal papers. Hence no error can be attributed to NCLT proceedings.

5. Importantly, nothing has emerged from the enquiry that can remotely suggests any impropriety, bias, or departure from judicial discipline on the part of the Hon'ble Members of the NCLT, Chennai Bench. On the contrary, the records affirm that the proceedings were conducted strictly in accordance with law, and the judicial actions taken and orders passed were consistent with established adjudicatory procedure. The institutional credibility of the NCLT Tribunal and its Hon'ble Members therefore stand fully vindicated.

6. In view of the above, I am satisfied that the concerns noted by the Hon'ble NCLAT regarding the procedural aspects surrounding the order dated 15.03.2022 stand fully clarified and there is no error. **I hold, that it is not a dubious order** and it is the Appellant who has dubiously failed to inform the Appellate Tribunal that he has mentioned the case for listing of the matter and it is on his request that the matter was listed on 15.03.2022. No action administrative otherwise of any kind is warranted against anyone or in any manner. The issue is treated as closed.

7. I hasten to add that during my tenure NCLT was conducting its affairs in a very fair and transparent manner and the confidence of all litigants' stakeholders in the NCLT eco system is evident from the cases status report

uploaded every quarter and affirmed by the recent economic survey. All over India, NCLT scrutiny of cases filed has been reviewed and cleared & nil status is reported every month on NCLT website. Even AR login delays have been reduced to a great extent. Many of the advocates have given their appreciation on the manner in which virtual courts are being conducted. Based on the institutional integrity, NCLT performance in the last 4 years has been phenomenal, which data will be revealed shortly. It is the contribution of all the NCLT members that has made NCLT a dynamic Tribunal giving back to the economy nearly Rs.20 Lakh crores in various forms of adjudication and so far 1501 plans have been approved. The effect and efficiency of NCLT has many fold benefits which will be published shortly.

NCLT has been bearing the cross for many accusations to which it is not responsible. Despite the same NCLT's performance has been better than all other Tribunals in the Corporate Eco system. The order calling for enquiry, uploaded on website and reported in media has invited unwanted criticism which could have been avoided.

1. Registrar to forward this finding to Hon'ble Chairperson, NCLAT,
2. Copy of the report to be uploaded on NCLT Website.
3. Copy to the media who reported this incident for publishing clarification.

**Hon'ble President
NCLT**

Date: 06.02.2026

Place: Chennai

True copy.


13/02/20

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य पी.एस.जे.एस. / U.P.H.J.S.