

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**  
**(APPELLATE JURISDICTION)**  
**Company Appeal (AT) (CH) No.60/2022**  
**(IA No.683/2022)**

**In the matter of:**

**M/S. ABLE AUTOMOBILES PRIVATE LIMITED**

34/1863, NH-47 Road  
Opp. Metro Pillar No. 482  
Mamangalam, Kochi - 682 025

**... APPELLANT NO. 1/RESPONDENT NO.1**

**SHRI DEVAKI NANDAN SINGHAL,**

Managing Director  
36/3178 A, 42, Nandankunj  
Near North Indian Charitable Trust,  
Udayanagar, Kathrikadavu,  
Kochi-682017

**... /APPELLANT NO. 2/RESPONDENT NO.2**

**SHRI. ARAVIND SINGHAL**

36/3178 A, 42, Nandankunj  
Near North Indian Charitable Trust,  
Udayanagar, Kathrikadavu,  
Kochi-682017

**... APPELLANT NO. 3/RESPONDENT NO.3**

**SHRI. VIKAS SINGHAL**

36/3178 A, 42, Nandankunj  
Near North Indian Charitable Trust,  
Udayanagar, Kathrikadavu,  
Kochi-682017

**... APPELLANT NO. 4/RESPONDENT NO.4**

**SHRI. VINAY SINGHAL**

36/3178 A, 42, Nandankunj  
Near North Indian Charitable Trust,  
Udayanagar, Kathrikadavu,  
Kochi-682017

**... APPELLANT NO. 5/RESPONDENT NO.5**

**V**

**SMT. REKHA SINGHAL**

C/o T.C Goyal

21/D, Second Phase,  
Peenya Industrial Area,  
Bangalore - 560 058.

**...PETITIONER/RESPONDENT NO.1**

**REGISTRAR OF COMPANIES,**  
Kerala, Company Law Bhavan,  
Opp. NPOL, Near NGO Quarters,  
Thrikkakara,  
Ernakulam-682 021

**...RESPONDENT NO.7/RESPONDENT NO.2**

**SHRI. K. J. THOMAS,**  
Bsc. FCA Chartered Accountant, Kossiril  
Civil Lane Road, Palarivattom  
Kochi-682025

**...RESPONDENT NO.6/RESPONDENT NO.3**

**Present :**

For Appellants : Mr. Judy James, Advocate  
For Respondents : Dr. KS. Ravichandran, PCS &  
Ms. S. Manjula Devi, Advocates for R1

**JUDGMENT**  
**(Hybrid Mode)**

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

The issue of concern, as it has been vehemently canvassed by the Ld. Counsel for the Appellant, in the instant company appeal, while he puts a challenge to the impugned order dated 30.06.2022, rendered by the Ld. NCLT Kochi Bench in CP/20/KOB/2021, being the proceedings under Section 59, 213, 241 & 242 of the Companies Act, 2013, read with Rule 11 of the NCLT Rules of 2016, which were preferred by Respondent No. 1, herein who is the Petitioner to the company petition.

2. The Respondent No. 1/Petitioner, happens to be the estranged wife of Appellant No.3/Respondent No. 3. What has been attempted to be impressed

upon by the Ld. Counsel for the Appellant is, as if the entire controversy arisen from the personal matrimonial dispute between the Appellant No. 3 and Respondent No. 1, which the parties to the proceedings were harbouring against one another owing to their matrimonial discord.

3. But at this stage itself, we make it very clear that, any such type of an impression, which is being attempted to be created regards personal dispute, will not be having any bearing, nor would be influencing, the actual controversy, which requires consideration in the instant company appeal, and this Appellate Tribunal will be confining itself to the judicial and procedural propriety of the impugned order of 30.06.2022.

4. To be precise, the Ld. Tribunal, while exercising its inherent powers, and taking into consideration, the fact that since the inter-se controversy was pertaining to the shares and its transfers, which were alleged to be based upon fraudulent documents, which has been relied upon by the parties, as against one another, the Ld. Tribunal felt, it apt that, it ought to exercise its inherent powers, to invoke the provisions contained under Rule 43 of the NCLT Rules, 2016, in order to enable the Ld. Tribunal to better facilitate and to effectively adjudicate upon the principal controversy, as it engaged consideration in the company petition, which is put to challenge in this company appeal, which is still a proceedings to be decided by the Ld. Tribunal on its merits.

5. The consequential legal and procedural bearing of the impugned order dated 30.06.2022, would be having a very limited implication, because it had only resulted into, an appointment of an independent Auditor, who should not in any manner be connected with the affairs of the company, and was expected to conduct an impartial Forensic Audit inquiry as regards to the allegations and counter-allegations pertaining to the financial irregularities if any with regards to the affairs of the company and to submit his report thereafter.

6. It was further clarified in the impugned order itself that, the independent Auditor who had been thus appointed by the Ld. Tribunal, would be determining the issues as to whether the petitioner, who claims to be holding 52,500 equity shares in the company, whether at all the copy of the share certificates, those has been produced by her to establish her holding of the equity shares is at all legally justified? And whether at all, the Respondents No. 4 and 5 to the company petition have engaged themselves, in any act of fraudulent and illegal transfer of shares in favour of Respondents No. 4 and 5?

7. The ultimate conclusion, which has been arrived in the impugned order by the Ld. Tribunal, owing to the prevailing factual circumstances of the petition was that, it had proceeded to appoint a registered Chartered Accountant, to conduct an investigative audit and the direction for the conduct of the audit, was to draw the accounts of the company for the financial year ending on 31.03.2019 and further to identify the cases of potential accounting fraud that, had occurred

in the financial statements of the company, i.e., M/S. Able Automobiles Private Limited, by taking into consideration the pleading, which has been raised in the company petition by the parties, placing reliance on the respective documents, that were relied upon.

8. The instant company appeal may be that, it is revolving around a multifarious bundle of facts, based upon which independent interpretation that, had been given by the respective parties to the proceedings; to the documents that, had been filed by them in support of their rival contentions, while putting a contest to the allegations that had been levelled in the company petition in context for the relief claimed therein. But ultimately, the controversy, which boils down herein, for our consideration and which is the precipitative grievance, as it had been agitated by the Appellant, is that as to, "whether at all, the powers under Rule 43 of the NCLT Rules, 2016, could be expanded to be exercised by the Ld. Tribunal under the given set of circumstances:

(i) For the purposes to appoint an independent auditor

(ii) For the purposes of carrying out an investigative audit and to cull out the details pertaining to the fraudulent transfer of shares and the alleged allegations of fraudulent acts committed, while preparing the reports for the financial year, which has been ending on 31.03.2019".

9. The Ld. Counsel for the Appellant, while questioning the impugned order dated 30.06.2022, had made the following submissions:

(i) He submitted that the impugned order dated 30.06.2022, would be suffering from apparent legal vices, for the reason being that, for the purposes of invocation of the provisions as it is contained under Rule 43 of the NCLT Rules, 2016, there had been '*no independent application*' that was preferred by the Respondents, seeking a prayer before the Ld. Tribunal for carrying out an investigative audit. Hence, the Appellant submits that the Ld. Tribunal under Rule 43 of the NCLT Rules, 2016, couldn't have exercised, its inherent powers on its own for calling for an investigative audit report owing to the set of allegations that, had been levelled in the pleading raised inter se between the parties.

(ii) He further referred to, as to, what will be the '*ambit and scope of the powers of Registrar of Companies*', over the nature of controversy involved herein, particularly in the light of the provisions contained under Rule 45 of the NCLT Rules, 2016, which would be also one of the factors required to be considered by this Appellate Tribunal.

(iii) In elaboration to his argument, he submitted that, whether on a conjoint reading of Rule 43, to be read with Rule 45 of the NCLT

Rules, 2016, whether the same could be permitted to be adopted by any of the parties to the proceedings of the company petition, to be utilized as a '*platform for fishing out evidence*' in favour of any of the parties to the proceedings.

(iv) The Ld. Counsel for the Appellant submitted that, even for the time being, let us presume that, the Ld. Tribunal could have exercised its powers under Rule 43 of the NCLT Rules, 2016, to call for an investigative audit report. But for that purpose, the Ld. Tribunal, once it is exercising its powers in the absence of there being any application, cannot proceed to pass the impugned order merely by recording a very vague observation that the "*Ld. Tribunal is prima facie satisfied*".

(v) He submits that, the said expression as it has been given by the Ld. Tribunal in the impugned order, where the Ld. Tribunal, records a prima facie satisfaction justifying the invocation of Rule 43 of the NCLT Rules, 2016. It was incumbent upon the Ld. Tribunal, which was exercising its adjudicatory powers, '*to have considered the material and should have recorded its findings*' to justify the passing of an order for issuing a direction for conducting a forensic investigation. Though not relevant, the Ld. Counsel for the Appellant has submitted that the entire proceedings apparently seem to be vitiated because of a certain hidden inclination of the Registrar

of Companies, having submitted the reports to one of the lawyers only, without serving the same on the Appellant's lawyer.

(vi) Ld. Counsel further contends that, the reports, which have been submitted pertaining to the financial status of the company, up to the financial year ending on 31.03.2019, since being false and a fabricated document, the entire proceedings, as it has been observed to be determined by way of conducting a forensic investigative audit, is without any rationale.

(vii) And lastly, he even questioned the propriety of the Ld. Tribunals' order with regard to the '*authority of Ld. Tribunal for fixation of the fee to be paid to the Auditor*', who was appointed by the Ld. Tribunal for conducting the Forensic Audit.

10. The summary of facts, that had been referred in the impugned order, the dispute, it has its birth from the pleadings that were raised in the company petition, as it was preferred by Respondent No. 1, to the company appeal, by filing the same before the Ld. Tribunal on 13.04.2021, claiming her status as to be the shareholder of the Respondent No. 1 to the company, i.e., M/S. Able Automobiles Private Limited, the Petitioner therein alleges that, in the communication as submitted by Appellant No.1/the Respondent No.1 to the company petition on 01.08.2020, which was addressed to the Ld. Counsel for the Respondent No.1/Petitioner. She has contended that, she was intimated that she is holding

52,500 fully paid up equity shares of Rs. 10/-, which comprised of 17.50% of the total paid-up share capital of the 1<sup>st</sup> Respondent Company, that is of 30 lakhs, comprising of 3 lakh equity shares, of Rs. 10/- each.

11. Based upon the aforesaid assertion made by the Respondent No.1/Petitioner, she claims an exemption to sustain the procedure to file the company petition alleging that, it overrides the bar that had been created by Section 244 of the Companies Act, 2013. According to the Respondent No.1/Petitioner, the list of shareholders as it was submitted along with the returns made upto 30.09.2019 for the financial year 2018-2019 and also, the balance sheet as of 31.03.2019, which was submitted before the Registrar of Companies, Kerala, the annual return for the aforesaid financial year, which was made available only on 30.09.2019, that showed that the Respondent No.1/Petitioner, held 52,500 equity shares, as it was reflected from the information given by the Registrar of Companies for the state of Kerala, to the Appellant No.1/Respondent No.1 company itself.

12. Alleging that, there happens to be a fraudulent transfer of the shares, which were said to have been held by Respondent No.1/Petitioner, she invoked the proceedings of the aforesaid company petition being CP/20(KOB)/2021, by invoking the provisions contained under Section 59, 213, 241 and 242 of the Companies Act, 2013. The case of the Petitioner in the company petition was that, Respondent No. 1, to the company petition was a registered company and as per

the provisions contained under the Companies Act, the Respondent No.1 having so incorporated with effect from 15.04.1996. The Respondent No.1/Petitioner, as already observed that, out of the total equity shares floated by the company, she claims to be holding 52,500 equity shares in Appellant No.1 company. She contended that Respondent No. 2 to the company petition, who happens to be the managing director and the promoter of the Appellant No.1/Respondent No.1 company, and Respondent No.3 to the company petition who is yet another promoter director of the Appellant No.1/Respondent No.1 company had acted in connivance with Respondent No. 4 and 5, who are the directors of the Appellant No.1/Respondent No.1 company, had acted in conspiracy with the statutory Auditor i.e., Respondent No. 6 to the company petition, who is shown to have audited the balance sheet and profit and loss accounts of the company for the financial year ending on 31.03.2019, submits that, owing to the object as it was contained in the memorandum of association of the company. It was found that, under the compelling circumstances, because the balance sheet and the profit and loss account of the Appellant No.1/Respondent No.1 company, for the aforesaid accounting period was not reflecting the correct balances. Besides that, since the list of shareholders as shown in the register too was not in conformity with the actual shares, which was being held by them.

13. The Respondent No. 1/Petitioner is said to have issued a legal notice on 18.07.2020 to the board of directors of the company, alleging thereof that, in

accordance with the records, which has been maintained and were available with the Registrar of Companies of the state of Kerala. Though it reflects the Respondent No.1/Petitioner to be holding 52,500 shares, but the Petitioner has been shown to have paid Rs 7 lakhs, which was shown as an unsecured loan to the company in its balance sheet.

14. However, the allotment of equity shares to her doesn't correspond with the particulars reflected in the balance sheet of the Appellant No.1/Respondent No.1 company, and she submits that, as against the total equity shares, which were expected to be actually held by her, since it was not reflecting the correct figures, she filed a company petition praying for a relief to the effect to declare, the Respondent No.1/Petitioner to be the holder of 52,500 equity shares of Rs. 10/- each, besides also making a prayer for the rectification of the register of members under Section 59 of the Companies Act, 2013, by including the name of the Petitioner as a member of the company with the aforesaid share holding configuration. Also praying to pass an appropriate direction under Section 213 of the Companies Act, 2013, and appointment of the competent inspector to investigate into the affairs of the company, with regards to the aspect of mismanagement, misappropriation and related party transactions, which has been unlawfully taken by the opposite parties to the company petition, including non-deposit of the demonetized currencies with the bank and such other allegations, as raised by the Petitioner.

15. Consequently, the Respondent No.1/Petitioner in the company petition, has sought that, an appropriate direction may be issued in the light of the provisions contained under Section 242 (1) of the Companies Act, 2013, for recovering the amount from Respondents No. 2, 3, 4 and 5 to company petition, from the undue gain made by the said Respondents to company petition by unlawfully dealing with the shares of the company deposited by the Respondent No.1/Petitioner, and accordingly alleging that, they have committed a fraud on the Petitioner, as well as upon the conduct of the affairs of the company in a manner, which has been prejudicial to the interests of the public and it will amount to be an act of oppression.

16. Further, the Petitioner/Respondent No.1 by invocation of the provisions contained under Section 447 and 448 of the Companies Act, 2013, has sought a relief in the nature of declaration as against Respondent No. 2, 3, 4 and 5 of company petition who have intentionally committed a fraud in respect to the documents filed with the Registrar of Companies, Kerala and to direct the Registrar of Companies, to initiate a prosecution for the said offences by invoking the provisions contained under Section 439 of the Companies Act, 2013, besides imposition of cost.

17. The Respondent No. 1/Petitioner in this petition has projected before the Ld. Tribunal, that at the stage when the impugned order was being passed, she had submitted that as against the set of allegations that, were levelled towards her,

she had issued a legal notice on 18.07.2020, to the Board of Directors of the Respondent company with reference to her shareholding in the company. In the absence of there being any clarification given by the opposite party to the company petition, she contended that the allegation levelled by her and the shareholding as given by her in the notice of 18.07.2020, should have been taken as to be prima facie true, since it remained un rebutted.

18. Owing to the fact that in the light of the misleading statements made orally by Respondents No. 2 and 3 to the company petition, that the share certificates were never issued. The Petitioner contended that, because of the stand taken by Respondents No. 2 and 3, with regards to the status of the issuance of the share certificate, she has requested for issuance of a duplicate share certificate, and also for providing with the entries made in the books of accounts with respect to the amount of Rs. 7 lakhs paid by her to the company. The allegation by the Petitioner was, that the Respondent to the company petition, without any application, being made by the Petitioner had on their own issued the equity shares for an amount of Rs. 7 lakhs, as an unsecured loan to the company as it has been correspondingly shown to be reflected in the balance sheet of the company, which was procured.

19. According to the Respondent No. /1Petitioner, she contended that upon accessing the records from the website of the Registrar of the Companies, Kerala, the company had filed Form No. 2, showing that the company had allotted shares as per the Board Resolution dated 29.03.2008, and a total of 52,500 equity shares

of Rs. 10, each was allotted to the petitioner, out of the total 1,65,000 equity shares allotted to the persons referred to therein on the said date in the website of the Registrar of Companies. She further contended that, with regards to the distribution of the shares and the reflection as it has been made in the website of the Registrar of Companies, Kerala, it was not reflecting the exact holding of the shares, as held by each of the directors, including shareholding of the Respondent No.1/Petitioner, and had submitted that since a false statement has been made by filing a misleading and false returns with the Registrar of Companies, Kerala. Hence, the return Form No. 5 filed before the Registrar of Companies, Kerala, which shows that the authorised capital stands increased from Rs 9,50,000 to Rs 30,00,000 as per the resolution passed on 31.03.2008, submitted that, the said figure as reflected are portraying the wrong figure, because as per the provisions contained under Section 94 of the Companies Act, 2013, it clearly prescribes for that the power of increasing of the share capital, it shall be exercised by a company only in a general meeting and not otherwise. Hence, the allotment of 16,500 shares which were held to be made on 29.03.2008, when the company did not have adequate authorised capital is illegal and was done with an ulterior motive.

20. Besides, that an allegation was also raised by the Respondent No.1/Petitioner in the company petition, that the annual returns, which were made up to 29.09.2018, wherein the list of shareholders has been attached, it was

carrying a note that the entries made therein was having certain errors because of the clerical mistake which occurred in the previous year's filing of MGT 7, and the number of shares that were actually held by the three shareholders had been wrongly entered into, and the same deserves to be rectified while exercising powers given for rectification of Registrar of Members provided under Section 59 of the Companies Act, 2016.

21. Based upon the aforesaid fact, ultimately the Respondent No.1/Petitioner, analysed the controversy, contending thereof, that because of the fraud apparently having been committed by the Respondents to the company petition, had amounted to an act of oppression and mismanagement against the minority shareholders and the fact of omission of the name of the Petitioner from the list of shareholders, could only be gathered at a later stage. It is owing to the aforesaid contention being raised by the Petitioner, the Respondents to the company petition has answered vaguely that, the mistake has resulted into that due to clerical mistake, which had chanced in the previous years' while filing of MGT-7, when the number of shares, which had been held by the three shareholders had been wrongly entered and the same has been rectified by them in the subsequent year.

22. The Petitioner/Respondent No.1, besides also raised an allegation that the procedure as prescribed under the Companies (Registration Offices and Fees) Rules, 2014, was not complied with. To summarise the pleading as raised by her

before the Ld. Tribunal, she concluded that the balance sheet and profit and loss account as reflected, as on 31.03.2019 contained number of serious anomalies. To be precise, the CARO [Companies (Auditors Report) Order] the report by the Auditors with regards to the title deeds of all the immovable properties are in the name of Respondent No. 1 company, whereas in fact it does not own any immovable property.

23. The list of the stock inventories, for the financial year 2018-19, was also giving a wrong figure. And owing to that, she contended that the wrongful figures were reflected in the balance sheet and the inventory of stocks as maintained, owing to there being a collusion between the Auditors and the opposite parties who were furnishing such wrong information as regards to the particulars pertaining to the previous financial years.

24. In the aforesaid, factual backdrop, the Ld. Counsel for the Appellant, has put a challenge to the impugned order dated 30.06.2022, which allowed the application under Rule 43 of the NCLT Rules, 2016, and directed the Forensic Audit to be conducted with regards to the documents, which were, during the course of the proceedings were alleged to be obtained by fraud or fraudulently manufactured. The Ld. Counsel for the Appellant, primarily contended that, the impugned order would be bad in the eyes of law for the reason being that, the Ld. Tribunal has on its own passed an order while exercising its suo moto powers; in the absence of there being any specific application having being preferred by the

Respondent (or any of the parties to the proceedings), making a request for sending the documents for conducting of a Forensic Investigative Audit, the entire proceedings under Rule 43 of Rules would be vitiated, and no such order could have been passed in the absence of there being a prior request by way of an application.

25. In order to better appreciate the aforesaid argument, as it has been extended by the Ld. Counsel for the Appellant, a reference to Rule 43 of the NCLT Rules, 2016, becomes inevitable for this Appellate Tribunal. The NCLT Rules, 2016, had been framed by the Government of India, while exercising its powers as vested in it under Section 469 of the Companies Act, 2013. Rule 43 of the NCLT Rules, 2016, reads as under:

***“43. Power of the Bench to call for further information or evidence. –***

*(1) The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-*

- (a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or*
- (b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.*

*(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper,*

*written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.*

*(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.”*

26. What we have to bear in mind is that, the procedures to be adhered to before the Ld. Tribunal and the Appellate Tribunal, as constituted under Section 408 and 410 of the Companies Act, 2013, are procedurally governed by the underlying basic principles of natural justice, as it has been contemplated under Section 424 of the Companies Act, 2013. The prime object of the prescribed procedure that, has been contemplated under Section 424 of the Companies Act, 2013, is that none of the parties to the proceedings may, at any stage of the proceedings have any grievances that, they were not provided with an effective opportunity to establish their case, or to enable them to establish the sanctity of the proceedings agitated and drawn against them by their adversary. The objective is of enabling a party to exercise its absolute rights to “establish their case to the hilt” is the basic objective, which had been intended to be achieved by the rules as framed under Section 469 of the Companies Act, 2013, and

particularly, the rules with, which we are concerned, which constitute to be part of Part IV, of the NCLT Rules of 2016.

27. If the language of Rule 43 of the NCLT Rules, 2016, itself is taken into consideration, it starts with the head, '**Power of the Bench**', the reference of the language power of the bench therein itself in the title head, is an answer to the question raised by the Ld. Counsel for the Appellant, that it is a self-ordained power, which has been vested with the Ld. Tribunal to ensure an effective dispensation of justice and particularly, the objective that has been widely contained under Section 424 of the Companies Act, 2013.

28. Even otherwise, if we scrutinize the entire provision of Rule 43 of NCLT Rules, 2016, it nowhere stipulates or prescribes for that, there has had to be a specific application which is required to be preferred by any party to the proceedings for the purposes of invocation of the provision contained under Rule 43 of the NCLT Rules, 2016. In that eventuality, when the provision itself doesn't contemplate filing of any specific application, that in itself can be explicitly inferred that, even if a party to the proceedings intends to invoke the aforesaid provision contained under Rule 43 of the NCLT Rules, 2016, requiring for collection of the information or any evidence there is no specific bar which has been created under law as such for any of the parties to the proceedings mandatorily requiring to file an application nor there is a corresponding or parallel bar created for the Ld. Tribunal too, to exercise its inherent power

wherever, the Ld. Tribunal feels it necessary that, a discovery of certain documents are required in the interest of justice to be tested, on an anvil of evidence for its justification, so as to be read in evidence, once the rule itself doesn't prohibit the Ld. Tribunal, and it couldn't have been also, because once the Ld. Tribunal is exercising a judicial power, which is adjudicatory in nature, it has got, with, it all its inherent powers to ensure that, any controversy, which is being agitated before the Ld. Tribunal by the parties to the proceedings pertaining to the propriety of a document, which is alleged to have been fraudulently created or being a manufactured document, nothing under the rules specifically prohibits that the Ld. Tribunal cannot exercise its suo moto power, even when the Ld. Tribunal feels that, it was necessary for to facilitate them to come to a plausible and an effective conclusion about the controversy pertaining to a document, which may be having a vital bearing on the merit adjudication of the controversy before it.

29. In that eventuality where Rule 43 of the NCLT Rules, 2016, itself doesn't specifically prescribe, filing of any specific application, there would be no restriction, for the Ld. Tribunal, which could always exercise its inherent powers and thus, taking cognizance of the invocation of Rule 43 of the NCLT Rules, 2016, for directing a Forensic Investigative Audit to be conducted, which cannot be held to be bad merely because of the fact that there was no specific application

preferred by the Respondent's, herein. Particularly when this arguments intents to deceive the aspect of fair and effective adjudication of a litigation.

30. The Ld. Counsel for the Appellant had in particular, referred to Rule 43 (3) of the NCLT Rules, 2016, wherein he submits and interprets that, in accordance with Rule 43 (3) of the NCLT Rules, 2016, it prescribes that, any party preferring or contesting the petition of oppression and mismanagement, when they raise an issue of forgery or of fabrication of any "**statutory records**", in that eventuality, the party has been granted a "liberty" to file an application for forensic examination. A reference to this provision for soliciting an order for conduct of the forensic examination by the Central Forensic Science Laboratory, where the right of a party has been reserved where, a latitude has been granted by the aforesaid provision by using of the word "liberty" as it has been reserved for the party to the proceedings to get a statutory record tested through a forensic investigation. Liberty granted therein is not to be read as a restriction for exercise of powers by the Ld. Tribunal under Rule 43(1) of NCLT Rules, 2016.

31. Yet again, it will be a reiteration of the observation, which has been made by this Appellate Tribunal that even if this provision is taken into consideration, the word "**liberty**", which has been left open to be exercised by the parties, is not to be read in a restrictive manner, as a restraint for the Ld. Tribunal to exercise its inherent powers to call for a document for its scientific examination, which it feels to be just for an effective adjudication, so as to rule over the plea of fraud.

And particularly, when the aforesaid process only contemplates and rather when it facilitates the Ld. Tribunal, which is an adjudicatory body, to arrive at a logical conclusion before considering a document and its impact on the controversy for the purposes of deciding the issue between the parties as to, whether at all those documents are required to be considered to decide the dispute raised by the parties. Hence, filing of an application in a procedural provision is not mandated by Rule 43 of the NCLT Rules, 2016, in the absence of there being any such provisions contained in Rule 43 of the NCLT Rules, 2016.

32. Thus, the argument raised by the Ld. Counsel for the Appellant that, there was no specific application preferred before the Ld. Tribunal cannot in itself restrain the Ld. Tribunal from invoking its power to call for a document and verify its authenticity, and hence the said argument as raised by the Ld. Counsel for the Appellant is not sustainable, and the same is turned down.

33. This controversy could also be visualized and, as already referred to, that Section 424 of the Companies Act, 2013, prescribes the principles governing the proceedings before the Ld. Tribunals, as created under the provisions of the Companies Act, 2013. Those, Tribunals which had been vested with the powers to, govern its proceeding and according to the provisions contained under the Code of Civil Procedure, as provided under Section 424 of the Companies Act, 2013, can exercise its inherent powers to do an act for a just decision.

34. In that eventuality, the provision contained under Order XI, Rule 14 of the Code of Civil Procedure (CPC), which to be read with Section 30(a) of the Code of Civil Procedure (CPC), the same are extracted hereunder:

***"Section 30. Power to order discovery and the like.***

*Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—*

*(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;*

*(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;*

*(c) order any fact to be proved by affidavit."*

***"14. Production of documents.—It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. "***

35. The aforesaid provision itself provides for that under Order XI, Rule 14 of the Code of Civil Procedure (CPC), it would be the court who can exercise its powers during the pendency of the proceedings of the suit (herein would be company petition), **to call for a party** to the proceedings to produce a document and further **the court may send the documents** for its verification through an

investigating agency. Apart from the aforesaid object of the provisions contained under Rule 43 of the NCLT Rules, 2016, to be read with, Order XI, Rule 14 of the Code of Civil Procedure (CPC), to be read with Section 30 of the Code of Civil Procedure (CPC).

36. We are of the view that, the procedures to be followed before the court, are handmade of justice. They are not to be rigidly construed to lead to deprivation and is not to be followed in a straight-jacketed formula, so as to restrict their application and to defeat the very object of dispensation of an effective justice by rendering a decision after appreciation of the documents, which may have a vital bearing, on the proceedings and the right of the parties before the Ld. Tribunal or the Hon'ble Court. Hence, no such procedural law, which only regulates the proceedings, can be restrained to be attracted and applied only on an application by the parties to the proceedings, and not by the Ld. Tribunal itself, because it's always the satisfaction of the Ld. Tribunal, which plays a predominant role, that is, when the Ld. Tribunal feels that any such document is required to be tested by a scientific investigation, no prohibition as such could be imposed upon the Ld. Tribunal, as it has been argued by the Ld. Counsel for the Appellant, restricting the powers of the Ld. Tribunal for not to summon the documents and call for Forensic Investigative Audit even if the Ld. Tribunal is determined that those documents are required to be tested. Thus, the argument extended by the Ld. Counsel for the Appellant in that context is not acceptable.

37. The issue pertaining to the exercise of powers by the Ld. Tribunal under Rule 43 of the NCLT Rules, 2016, is being sought to be argued by the Ld. Counsel for the Appellant, in context of its portrayed implications contained under Rule 45 of the NCLT Rules, 2016, contending thereof that the impugned order as it was passed by the Ld. Tribunal, would be in derogation to the intention of the provision contained under Rule 45 of the NCLT Rules, 2016. In fact, the manner in which the provisions contained under Rule 45 of the NCLT Rules, 2016, has been attempted to be interpreted by the Ld. Counsel for Appellant, with regards to the issue pertaining to the ambit and scope of exercise of powers of the Registrar of Companies. The Ld. Counsel for the Appellant as contended by virtue of written submissions filed by the Appellants is that the Ld. Tribunal issued an Impugned order based on unsolicited Registrar of Companies reports without recording reasons, which is contrary to Rule 45(4) of NCLT Rules, 2016, and also contended that the Registrar of Companies may be called for to submit the reports but they cannot express any opinion on merits.

38. The justification for the aforesaid observation is that, if the provisions contained under Rule 43 of the NCLT Rules, 2016, is taken into consideration, which is restricted to for the purposes of calling for the information or evidence, the aspects pertaining to calling for an information or an evidence is altogether distinct in its application, than to the powers which are contemplated to be exercised by the Ld. Tribunal in accordance with the provisions contained under

Rule 45 of the NCLT Rules, 2016, which independently pertains to conferring of a right upon every party to the proceedings for his entitlement to appear before the Ld. Tribunal in person or through an authorized representative. For the purposes of substantiating his case, 'appearance in person' and 'calling for an information or an evidence', are entirely two distinct aspects, as information pertains to seeking or soliciting of an information, which is otherwise outside the domain or knowledge of the party to the proceedings or outside the records of the case, or if they are within the domain or knowledge of the parties to the proceedings if they are controverted by an adversary to the proceedings, these documents or information may be required to be tested in accordance with the implications contained under Rule 43 of the NCLT Rules, 2016. Hence Rule 45 of the NCLT Rules, 2016, exclusively mandates a right of appearance in person for recording a statement in the manner as prescribed under the rule itself before the Ld. Tribunal. The provisions contained under Rule 45 of the NCLT Rules, 2016, cannot be read to be in any manner, derogating the provisions contained under Rule 43 of the NCLT Rules, 2016, as they have independent and distinct application.

39. Another question, which incidentally falls for consideration and it was fashioned to be argued in a manner that, resort to the process contemplated under Rule 43 of the NCLT Rules, 2016, for sending of the documents submitted by either of the parties to the proceeding for its examination through an Independent

Auditor, will amount to 'fishing and roving of evidence', which may not be a scope, which would be exercised by the Ld. Tribunal for accumulation of evidence in favor or against any of the parties to the proceedings, because the Ld. Tribunals being judicial forum cannot dilute its proceedings to be identified to be in favour of any one of the parties to the proceedings. We are afraid to accept this argument of the Ld. Counsel for the Appellant for the reason being that Rule 43 of the NCLT Rules, 2016, when it confers the powers on the Ld. Tribunal, in that eventuality it falls in the exclusive domain of the Ld. Tribunal, itself to justify for testing the evidence through an expert so as to provide its admissibility in evidence for establishing a case. When the powers under Rule 43 of the NCLT Rules, 2016, as we have already dealt with, while dealing with the issue, which the Appellant had argued that, there was no independent application and since we have already held that the provisions contained under Rule 43 of the NCLT Rules, 2016, is exclusively a power which has been vested with the Ld. Tribunal, if that be the intention of the Rule 43 of the NCLT Rules, 2016, its when the Ld. Tribunal feels it necessary according to its judicial wisdom to test a document through an expert as to decide the question of its admissibility to be read in evidence. It cannot be said that a judicial exercise of powers by the Ld. Tribunal for testing the alleged fabrication of the documents or calling for a document to be placed on the record to be considered in evidence, can at all be confused to be read, as if the provisions contained under Rule 43 of the NCLT Rules, 2016, has been adopted by the Respondent, as a measure to facilitate to collect evidence.

That may not be the situation herein for the reason being that, the documents which were being sent for its examination were the documents that are already available, only question which fell for consideration was that, the propriety and genuineness of the said document and its fraudulent creation, that was a question which was required to be decided after making a reference of these documents in a proceeding, to be tested by the Independent Auditor. If this recourse is adopted by the Ld. Tribunal, it cannot be taken that, as if any report, which is thus to be submitted by the Independent Auditor in compliance with the directions issued by the Ld. Tribunal under Rule 43 of the NCLT Rules, 2016, will amount to collection of an evidence in favor of either of the parties to the proceedings.

40. This argument could also be answered from yet another perspective, that may not be a logical inference, which could be drawn at this premature stage particularly when the need for the documents to have been referred to be tested by the Independent Auditor, for the reason, being that even after the examination of these documents, when the Independent Auditor furnishes its investigative audit report, either supporting or denouncing the contents of the documents and its propriety, it is not that the Ld. Tribunal will outrightly accept the report thus submitted and accept the documents directed to be examined by the experts to be read in evidence. Because procedurally, when the Auditor furnishes an investigative audit report in a proceedings before the Ld. Tribunal, the adversary to the proceedings will always get an opportunity to controvert the observations

that had been made by the Independent Auditor in relation to the documents, which has been placed before it on record and tested by the Independent Auditor in its report.

41. The acceptance of the document, and the acceptance of the Independent Auditor's Report to be read in evidence, under law would only be made when the Ld. Tribunal provides sufficient opportunity to the party against whom the report has been submitted to controvert its contents, and under law of consideration of evidence submitted in shape of Auditors Report, there cannot be any deprivation as such to enable the party to deny the contents of the document, as well as, the report itself to refrain it from being read in evidence. Thus, the resort to the said process of taking the documents on record on the basis of the exercise of inherent powers by the Ld. Tribunal cannot be construed in the manner as it has been argued that it will amount to fishing out or collecting evidence for any one of the parties to the proceedings.

42. Questioning the impugned order, the Ld. Counsel for the Appellant had submitted that if the impugned judgment is taken into consideration in its entirety, in fact, the Ld. Tribunal doesn't record any prima facie satisfaction, to justify passing of the order, directing the alleged fraudulent documents to be tested by the Independent Auditor. The argument extended that in the absence of there being a prima facie satisfaction recorded by the Ld. Tribunal, the order in itself

could not be justified to be accepted and that in itself could be a ground sufficient to set aside the order.

43. We are of the view that in the judicial proceedings, recording of a prima facie satisfaction sometimes while exercise of powers in the shape of an inherent exercise of powers, where the court records its findings, only prima facie justifying the necessity to test a document is sufficient, because detailed deliberation for testing of documents, which may have a bearing on the merits of the matter. For the aforesaid purpose, a detailed analysis or a scrutiny is not required to be assigned by the Ld. Tribunal at that initial stage, to justify the passing of an order appointing an Independent Auditor to test documents, particularly when the contents of the same have been denied. Prima facie deliberative satisfaction required to be recorded by the Ld. Tribunal may not be even the intention of the law also, because the provisions under Rule 43 of the NCLT Rules, 2016, under which the documents had been directed to be tested by the Independent Auditor, in itself do not prescribe any mandatory provision, which is necessarily required to be complied with by the Ld. Tribunal, prior to sending a document to be tested by an Independent Auditor. The prima facie satisfaction could at times in a judicial proceedings be a self-ordained powers, which are required to be exercised by the Ld. Tribunal or the courts with self restraint, and particularly in those circumstances where any conclusion, which has been arrived at to get documents tested by expert Auditor will not be attaching

a finality to the proceedings of compliance with the provisions contained under Rule 43 of the NCLT Rules, 2016, because that would be still left open to be tested in the proceedings by providing an opportunity to the parties to the proceedings to controvert the report, if at all its not acceptable by any of the parties to the proceedings.

44. Thus, recording of the prima facie satisfaction in the absence of there being any specific requirement under law may not be a reason for interference by this Appellate Tribunal and that too, when the furnishing of a document to be tested by the Independent Auditor happens to be in the exercise of an inherent powers and we are of the view that any provision of law, which prescribes with an inherent power with the Ld. Tribunal to do an act, there is no necessity for the Ld. Tribunal to specifically record an analytical finding for justifying the passing of an order to call for a document to be sent to the Independent Auditor as it may affect the functioning of the Auditor itself, there could be as possibility of bias to prevail in when Auditor, tests the documents. More particularly, when its tests and admissibility of report are still controlled when the documents are placed to be considered in evidence in the ultimate conclusive hearing of the proceedings.

45. Another argument, which has been extended by the Ld. Counsel for the Appellant, while putting a challenge to the impugned order by culling out certain facts from the proceedings that, has already been taken place owing to the fact that incidentally, the Registrar of the Companies has furnished some documents

to one of the counsels for the parties, while not furnishing the same to the other counsels, that in itself may not attach any stigma or procedural bias to the proceedings because such type of a situation may have incidentally happened, but still that in itself will not be a deprivation, because that would be a rectifiable error because if at all, the Appellant felt that the documents or the report thus submitted by the Registrar of the Companies, to one of the parties counsels, if at all it would be having any bearing on the proceeding, it was always open for the Appellant to have requested the Ld. Tribunal to direct the Registrar to furnish the report, as it had been furnished to the counsel for the other side which is complaint of, to them also, so that, they may also avail an equitable relief of scrutinizing the report and then presentation of their case in correlation to the Investigative Audit report as submitted by the Independent Auditor in context of the documents, which had been directed to be tested, which were alleged to have been fraudulently procured or fraudulently manufactured.

46. It needs no special reference that procedures are handmade to justice and should never be made as a weapon to be utilized with fatality to deny justice or to perpetuate any justice. At every stage of the proceedings the procedural defects or irregularities would not incapacitate a party to the proceedings to be denied with an effective opportunity. As such fatalities would always be curable and it ought not to be utilized to defeat the substantive right or to cause an injustice to a party to the proceedings.

47. Ultimately and very vaguely too, the Ld. Counsel for the Appellant had tried to attach a bias to the impugned order, on the ground that under law, the Ld. Tribunal is not vested with the powers to fix a fee, which would be payable to the Independent Auditor, for the purposes of furnishing of a report after investigation into the propriety of the documents, which were alleged to have been fraudulently manufactured or procured. It is a true trifle an issue, which could impeach the judicial proceedings or which could at all impeach the inherent exercise of powers of the Ld. Tribunal to fix a fee which was to be parted to the expert, who was facilitating in the decision-making process of the Ld. Tribunal or who would be facilitating the Ld. Tribunal in a reading of the document, which may be taken as to be a foundation of the proceedings too. Since the rules in itself do not anywhere restricts the powers of the Ld. Tribunal of fixing a fee to be paid to the Independent Auditor, and more particularly when the fixation of a fee is based upon the principles of quid pro quo.

48. In that eventuality, a reasonable remuneration is required to be settled by the Ld. Tribunal which was required to be paid to the Independent Auditor, who acts as an expert and who is a professional too in the eyes of law, who renders an expertise service to facilitate the Ld. Tribunal to effectively discharge its judicial functioning. When an Independent Auditor facilitates the Ld. Tribunal to discharge the judicial functions and he himself performs a duty within the exercise of powers of his professional expertise, he is required to be remunerated

for the services to be rendered. In that eventuality, the Ld. Tribunal will have its inherent powers. Hence, the Ld. Tribunal and for that purpose any other court will have an inherent power within itself to fix an appropriate remuneration to be paid to the professional rendering the services under the principles of quid pro quo.

49. This could be also very well visualized from yet another perspective because the question, which has been raised by the Ld. Counsel for the Appellant, he is not himself questioning the quantification of the fee made by the Ld. Tribunal alleging to be disproportionate, to be paid to the Independent Auditor. If the quantification is not a serious issue, in that eventuality, the exercise of inherent powers by the Ld. Tribunal directing to pay the fee to the Independent Auditor for the services to be rendered by him as an expert in itself could not be such a crucial issue, which could lead to setting aside of an order, which otherwise basically aims at to obtain a laudable object of dispensation of an effective justice by providing an ample of opportunity to both the parties to the proceedings to lead their evidence in support of the respective case.

50. Owing to the above grounds, and for the reasons as given by this Appellate Tribunal above, we are of the view that the impugned order where the Ld. Tribunal has justified its reasoning for appointment of an Independent Auditor to meet out the objection taken by the parties to the proceedings regarding the sanctity of the documents which were being relied upon, we think that since it

doesn't infringe any of the legal rights of the Appellant, thus it doesn't call for any interference by this Appellate Tribunal in the exercise of its appellate jurisdiction. The 'company appeal' lacks merit, and the same is accordingly 'dismissed'.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Indevar Pandey]**  
**Member (Technical)**

**23/12/2025**  
SN/MS/AK