

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP. (IB) No. 01/GB/2021

**Coram: Hon'ble Shri H.V Subba Rao, Member (J) : Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T) : Video
Conferencing**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL
COMPANY TRIBUNAL, GUWAHATI BENCH ON 09.09.2021**

Name of the Company: Surat Goods Transport Private Operational
Creditor

V/S

Pioneer Carbide Private Limited Corporate Debtor

Section: Under section 9(3) (b) of the Insolvency and Bankruptcy Code,
2016.

S.No. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	MS. R. SAHIN	Advocate	Petitioner	Present in video
2.	MR. MUKESH SHARMA	Advocate	Respondent	Conference

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical) &
Adjudicating Authority**

Sd/-

**(H. V. Subba Rao)
Member (Judicial) &
Adjudicating Authority**

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ORDER

[Per se: Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor i.e. Surat Goods Transport Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in short) against the Corporate Debtor Company, namely, Pioneer Carbide Private Limited.

2. The Petitioner/Operational Creditor namely Surat Goods Transport Private Ltd. with a Company Identification Number (CIN)- U99999MH1977PTC020049 is having its

Registered Office at Viraj Impex House,47, P.D. 'Mello Road' masjid East, Mumbai-400009, India.

3. The Respondent/ Corporate Debtor, namely Pioneer Carbide Private Limited, was incorporated on 9th March, 1999 with CIN- U27101ML1999PTC005692. The Registered Office of the Corporate Debtor is situated at: Upper Baliyan, Umtru Road, Ri-Bhoi, Byrnihat, Meghalaya-793101, India.

4. It is submitted by the Petitioner that a work order dated **19.04.2017** was made by and between the Operational Creditor and the Corporate Debtor, binding the Operational Creditor to transport various goods like as Ferro Silicon from Upper Baliyan, Umtru Road, Ri-Bhoi, Byrnihat, Meghalaya-793101 to the various parts of India. The Operational Creditor duly transported the said goods to the various parts of India.

5. It is further submitted that the Operational Creditor raised **6 (six)** bills upon the Corporate Debtor for the unpaid operational dues of Rs.4,13,950.00. The Corporate Debtor after receiving the bills/invoices did not raise any objection regarding in any manner whatsoever. The Corporate Debtor failed to make any payments of the bills dated- **16.02.2018; 03.03.2018; 06.03.2018; 20.03.2018; 29.05.2018** and **20.06.2018**. Subsequently, the Operational Creditor duly requested the Corporate Debtor in writing to pay the said dues vide letter dated **17th May, 2019**. However, after receiving the said letter dated 17.05.2019, the Corporate Debtor neither gave any reply thereto nor any amount in respect of the above 6 (nos.) invoices. The 6 invoices are annexed herewith and is available from **Page no. 59 to 64** of **Annexure A-3**.

Precisely, the payment against the following invoices raised have not been received:

Date	Bill No.	Amount of Debt Outstanding
16.02.2018	813/1718/00528	Rs.72450.00
03.03.2018	813/1718/00546	Rs.81250.00
06.03.2018	813/1718/00552	Rs.81250.00
20.03.2018	813/1718/00561	Rs.73200.00
20.06.2018	813/1819/00057	Rs.48300.00
29.05.2018	813/1819/00034	Rs.57500.00
Total		Rs.413,950.00

6. The Petitioner also states that the said invoices are still outstanding and have remained unpaid till date. That as on date, there is an outstanding amount of Rs.5,44,344.25.00 (Rupees Five Lakhs Forty-Four Thousand Three hundred and Forty-Four and Twenty-Five paisa only) (Principal amount of Rs.4,13,950 plus interest @18% per annum from 17th March 2018 to 31st December 2019 is Rs.1,30,394.25) along with further interest @ 18% per annum from 01.01.2020 till the date of actual realization which is due and defaulted and payable by the Corporate Debtor (CD). The date which the default occurred is 17th March, 2018.

7. The Petitioner submits that a **demand notice** under Sec. 8 of Insolvency and Bankruptcy Code, 2016, was issued by the Operational Creditor on **3rd January, 2020** under the provisions of Insolvency and Bankruptcy Code, 2016. The demand notice dated 3rd January, 2020 is annexed herewith and marked as **ANNEXURE A-1**.

8. The Petitioner further submits that vide letter no. PCPL/156/19-20/195 dated 28.05.2019 by the Corporate Debtor, the Operational Creditor was asked to send the Statement of Account and it was also mentioned in the letter about pilferage of material and lodging of alleged claim with the Insurance Company. The Operational Creditor replied vide notice No. SGTPL-22 (B) dated 22.07.2019 stating that since the Corporate Debtor has insured the consignment against the transit risk involved in road transportation and also have taken up claim with the Insurance Company, the Corporate Debtor is not legally justified in withholding the payment of freight charges of the Operational Creditor for the transportation services rendered by them for the period 24.07.2015 to 20.06.2018.

9. The Petitioner submits that that the Corporate Debtor replied to the notice dated 22.07.2019 vide letter dated 09.09.2019 stating that claims made by the Operational Creditor is not correct and concocted. The Letter stated that one consignment was sent to IISCO Steel Plant, Burnpur, under Invoice No. 0087 and material value of Rs.23,02,612.00 (Rupees Twenty

Three Lakhs and Two Thousand Six Hundred Twelve) through the OC , M/S Surat Goods Transport Pvt. Ltd. Builty No. 8130004700 dated 21.06.2017 and when the consignment reached its destination at IISCO Steel Plant, the consignment was rejected by the IISCO Steel Plant due to mixing of dust with the original material Ferro Silicon sent from the factory . Thereafter, a police case was registered on 05.07.2017 by the Pioneer Carbide Private Limited. i.e. the Corporate Debtor with Byrnihat PS, Meghalaya, against the Transporter, Truck Driver, Truck owner for Criminal Breach of Trust.

10. The Petitioner further submits that the Letter dated 09.09.2019 also mentions that the Corporate Debtor has undergone huge financial losses and the insurance company has also not settled any claim for the said consignment till date and the outstanding amount if any to the Operational Creditor shall be paid only after settlement of claim by the Insurance Company as per the work order issued by the Corporate Debtor.

11. It is submitted by the Petitioner that whenever approached for the payment, either through notice or letters, the Corporate Debtor in return deliberately, in order to evade from its liability, brought in new unrelated issues.

12. In light of the abovementioned facts and circumstances, the Applicant's prayer before this Adjudicating Authority is to initiate Corporate Insolvency Resolution Process ("CIRP" in short) in respect of the Corporate Debtor Company, namely, Pioneer Carbide Private Limited.

13. On the other hand, the Respondent has filed its reply vide affidavit dated 17.02.2021 and submits that the company petition is barred by law of limitation and on pecuniary jurisdiction. Also the Operational Creditor is under promissory estoppels and as such had no locus to initiate such application.

14. The Respondent submits that the averments made in the Company Application are not correct and misleading in nature and the deponent denies the same and in said connection submits that the applicant has failed to bring out any facts whereby it can be proved that the default has occurred as projected. The purported Company Application has been filed to mislead and suppress material facts and the deponent strongly disputes upon the same.

15. It is submitted by the Respondent that the Respondent Company, *M/s Pioneer Carbide Private Limited* is a company incorporated under the Companies Act, 1956, is engaged in manufacturing of Ferro Silicon and a registered Vendor of Steel Authority of India Limited since last 14 years and in this case is duly represented by its Director Mr. Shyam Sundar Agarwal. Copy of Company Resolution and ROC Master Data are attached herewith as **Annexure-1 and 2** of the reply-on-affidavit.

16. **The Respondent submits that the Operational Creditor was engaged by the Corporate Debtor for transportation of Ferro Silicon from the manufacturing unit of the Corporate Debtor to various plants of Steel Authority of India Limited situated in different parts of India and for that Work Order No. PCPL/156/17-18/145 dated 19.04.2017 was issued to Surat Goods Transport Pvt. Ltd. under clear acknowledgement and acceptance of Operational Creditor thereby amongst other as per Clause 4 of the said Work Order: *"In case of delay beyond delivery schedule, non- delivery police report should be made available to us with value of our consignment which shall be refunded to you after realization of our claim from the insurance company"*.**

Copy of the work order is attached herewith and marked as **Annexure- 3** of the reply-on-affidavit.

17. **The Respondent further submits that one consignment of Ferro Silicon was sent to SAIL IISCO Steel Plant on 21.06.2017 vide truck no. NL02L1644 under Invoice No. 0087, Consignment Note no. 8130004700 which was**

rejected on 29.06.2017 by IISCO Steel Plant due to replacement of original material in transit by the carrier. The formal intimation from IISCO Steel Plant was received on 04.07.2017 vide IISCO Steel Plant Letter No. RM/40/2017/750. Thereafter, FIR dated 05.07.2017 was duly lodged with Byrnihat Police Station against the applicant/Operational Creditor Transporter/Truck owner including its Truck driver. And in said regards an intimidation was given to the Operational Creditor vide letter no. PCPL/156/17-18/703 dated 10.07.2017 and to the Insurance Company "The Oriental Insurance Company Ltd" was also given on 13.07.2017 vide letter No. PCPL/OIC/2017-18/776.

Copy of Invoice No. 0087, copy of consignment Note no. 8130004700, Copy of IISCO Steel Plant letter no. RM/40/2017/750, Copy of an FIR dated 05.07.2017, Copy of letter no. PCPL/156/17-18/703 dated 10.07.2017 and copy of letter No. PCPL/OIC/2017-18/776 dated 13.07.2017 are attached herewith and marked as **Annexure-4, Annexure-5, Annexure-6, Annexure-7, Annexure-8 and Annexure-9** respectively.

18. The Respondent states that finding no other alternative, lastly the Corporate Debtor had initiated a notice dated 21.07.2017 under section 10 of Carriers Act for Recovery of a sum of Rs.23,02,612.00 (Rupees Twenty-Three Lakhs Two Thousand Six Hundred Twelve only) against contamination and theft of Ferro Silicon material quantity 28 MT (28 Bags X 1000 Kg) and till date the said amount has not been paid by the operational creditor.

Copy of notice dated 21.07.2017 under section 10 under Carriers Act is attached herewith and marked as **Annexure-11**.

19. The Respondent submits that the certificate of loss vide No. 17-18/5498 dated 19.12.2017 issued is a concrete proof of negligence and for that Operational Creditor shall be held responsible for the same and does not

deserve to demand any payment towards its freight till settlement of account as a whole.

Copy of certificate of loss vide NO. 17-18/5498 dated 19.12.2017 is attached herewith and marked as **Annexure-12**.

20. The Respondent further submits that a complaint was sent to the Director General of Police, Meghalaya vide letter dated 04.12.2018 to expedite the investigation by deputing a competent Police Officer to book the culprit to save Corporate Debtor's industry and enable it to supply its products to Steel Plants Govt. of India and now the matter was pending before Hon'ble Nongpoh Court, Ri-Bhoi District in Case No. 153(7)2017 U/S 120(B)/420/34.

Copy of complaint sent to the Director General of Police Meghalaya vide letter Dt. 04.12.2018 is attached herewith and marked as **Annexure-13** and a copy of an Order in case No. 153(7)2017 U/S 120(B)/420/34 is attached herewith and marked as **Annexure-14**.

21. The Respondent states that the Operational Creditor even after knowing fully well that the Corporate Debtor had made a counter demand vide notice dated 21.07.2017 under section 10 under Carriers Act to the tune of Rs.23,02,612.00 (Rupees Twenty Three Lakhs Two Thousand Six Hundred Twelve only) and without settling the same, have initiated a notice vide No. SGTPL/HO/Gwt/1705/19 dated 17.05.2019 for payment of Rs.5,58,781.00 (Rupees Five Lakhs Fifty Eight Thousand Seven Hundred only) and the said notice was duly replied by Corporate Debtor vide no. PCPL/156/19-20 dated 28.05.2019.

Copy of Notice vide No. SGTPL/HO/Gwt/1705/19 is attached herewith and marked as **Annexure-15** and a copy of reply by Corporate Debtor vide no. PCPL/156/19-20/195 dated 28.05.2019 is attached herewith and marked as **Annexure-16**.

22. The Respondent submits that the Operational Creditor again sent a Notice on **24.06.2019** through its legal department without signatory name which was duly replied by Corporate Debtor vide **reply No. PCPL/156/19-20/382 dated 08.07.2019** and the said was duly attached with notice from Byrnihat Police **dated 07.06.2019**.

23. The Respondent further submits that even after the position was made clear to Operational Creditor in reference to its claim, the Operational Creditor, knowing duly well that it had a liability under Carriers Act and had promissory estoppels as per contract, had once again initiated a legal notice dated **22.07.2019 vide No. SGTPL/22(B)** through its Advocate Ms. Kalyani G. Parmar Advocate, High Court, Mumbai and the said legal notice was completely based on incomplete facts and/or concocted story as build up by Operational Creditor and the said notice was duly replied on **09.09.2019** by Corporate Debtor through its advocate. Corporate Debtor is not liable under any situation and Operational Creditor with mala fide intention has filed this instant case wherein a default has yet not been arised and Operational Creditor has also tried to tarnishe the image of Corporate Debtor and for that the Corporate Debtor is in process to file appropriate suit before the competent court of law.

Copy of legal notice dated 22.07.2019 vide No. SGTPL/22(B) is attached herewith and marked as **Annexure-20**. And, Copy of Reply dated 09.09.2019 is attached herewith and marked as **Annexure-21**.

24. The Respondent submits that further a sum of **Rs.1,11,168.00 (Rupees One Lakhs Eleven Thousand One Hundred Sixty-Eight only)** was incurred on account of expenses for bringing back the rejected consignment by Byrnihat Police OC The same was directly attributable to Operational Creditor and the same was duly effected to the account of Operational Creditor in the books of corporate debtors.

Copy of statement is attached herewith and marked as **Annexure-22**.

25. The Respondent submits that in the instant case, the disputed amount as claimed by the Operational Creditor is a disputed one as per work order dated

19.04.2017 supported by notice dated **21.07.2017** of Corporate Debtor under Sec 10 of Carriers Act and various other notices and reply and further to state herein that application under Section 9 of the Code on the basis of the claims for entitlement of interest, is not maintainable.

26. The Respondent prays that in the light of submissions made, the impugned application may please be rejected/dismissed by rejecting all the contentions and statement made by the Operational Creditor in the Company Application.

27. The Respondent/Corporate Debtor has further submitted in its written arguments the following:

(i) That a perusal of the pleadings of the parties would reveal the existence of a pre-existing dispute. It is submitted that the applicant/ Operational Creditor was engaged by the Corporate Debtor for transportation of Ferro Silicon to various plants of steel authority of India limited vide order no. TCPL/156/1718/145 dated 19.04.2017 (**Annexure no.3 of affidavit in opposition at page no. 14**) and (**Annexure 2 of series of the application at Page No. 26**), which was clearly acknowledged by the Operational Creditor and amongst others it contained clause No. 4 that ***"In case of delay beyond delivery schedule, with value of our consignment which shall be refunded to you after realization of our claim from insurance company."***

(ii) **In this present case one consignment of Ferro Silicon meant to be sent to SAIL, IISCO steel plant on 21.06.2017 vide truck no. NL02I1644 under invoice No. 0087 (Annexure -4 of Reply affidavit at Page No. 15), Consignment Note No. 8130004700 (Annexure -5 of Reply affidavit at Page No. 16) was rejected on 04.07.2017 by Steel Authority of India Limited, IISCO Steel Plant due to replacement of original material in transit by the carrier i.e. Operational Creditor M/S**

Surat Good Transport Pvt. Ltd (Annexure-6 of Reply affidavit at Page No. 17). Thereafter a FIR dated 05.07.2017 (Annexure- 7 of Reply affidavit at Page No. 18) was lodged with Byrnihat Police Station against the Applicant/Operational Creditor including its Truck driver. And in said regards an intimation was given to the operational creditor vide letter no. PCPL/156/17-18/703 dated 10.07.2017 (Annexure -8 of Reply affidavit at Page No. 22, 24) and to the Insurance Company "The Oriental Insurance Company Ltd" on 13.07.2017 (Annexure-9 of Reply affidavit at Page No. 25-26). The said consignment was completely rejected by IISCO Steel Plant, Burnpur vide their mail dated 13.07.2017 (Annexure no. 10 at page no. 27-28 of Reply affidavit) and for the said loss of entire consignment of Rs. 23,02,612.00 (Rupees Twenty-Three Lakhs Two Thousand Six Hundred and Twelve), the Corporate Debtor had initiated notice dated 21/07/2017 at (Annexure no. 11 of Reply affidavit at Page No. 32) under Section 10 of the Carriers Act, and Corporate Debtor has not replied to the same, there by admitting its liability of Rs. 23,02,612.00 (Rupees Twenty-Three Lakhs Two Thousand Six Hundred and Twelve), towards theft of Ferro Silicon material and till date the said amount has not been paid by the Operational creditor.

(iii) The Operational Creditor in order to wrongful gain and bargain over the lawful demand of Corporate Debtor knowingly well that Corporate Debtor had already placed its demand of Rs.23,02,612.00 (Rupees Twenty-Three Lakhs Two Thousand Six Hundred and Twelve) (Annexure 11 of Reply affidavit at Page No.32) without replying to the said notice nor paying the demanded amount, has raised the claim of Rs. 5,58,781.00 (Rupees Five Lakhs Fifty Eight Thousand and Seventy Hundred Eight One Only) vide notice dated 17.05.2019 (Annexure 15 at page no. 44 of Reply affidavit) to which Corporate Debtor had replied

and demanded for verification of running account with demand settlement of losses of Corporate Debtor incurred on account of stolen goods arising due of the consignment code no. 8130004700 (Annexure No. 5 of Reply affidavit at Page No. 16) arising out of an invoice no. 0087 (Annexure No.4 of Reply affidavit at page no. 15). It is worth mentioning herein that till date the entire consignment in invoices no. 0087 dated 21.06.2017 is stuck up due to the rejection of said material by the IISCO plant vide their mail dated 13.07.2017 (Annexure no. 10 of Reply affidavit at page no. 27) and rejection of the claim by the insurance company on account of theft on 01.03.2021 (Annexure 2 of the counter reply of the Affidavit of corporate Debtor at Page 14).

28. That it is further submitted that the Operational Creditor has duly admitted in their counter reply to affidavit at paragraph no. 9, line no. 4 ***"that the applicant submits that there exists a dispute between the parties but the same relates to different transaction."***

29. **Therefore, from the entire records it is crystal clear that the Operational Creditor has acted under contract and had been maintaining a running account consisting of several transactions (Annexure 1 copy of ledger account of Counter reply of affidavit by the Corporate Debtor at page no. 7-13).**

30. It is submitted that it is no longer res-integra that once the operational creditor has filed an application which is otherwise complete ,the adjudicating authority has to reject the application under section 9 (5) (II) (d) of the IBC if there is a record of dispute. What is required is that the corporate debtor must bring to the notice of the Operational Creditor the existence of a dispute or the fact that a suit or arbitration proceeding relating to the dispute is pending between the parties. All that the adjudicating authority is required to see at this stage is whether there is a plausible contention which requires further investigation and the dispute is not a patently feeble legal argument or an assertion of facts unsupported by evidence. **It is now**

crystalized that so long as the dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application. [Reference should be given to **Civil Appeal No. 1137 of 2019 *Kay Bouvet Engineering Ltd. V. Overseas Infrastructure Alliance (India) Pvt. Ltd.* decided by Supreme Court of India vide Judgement and Order dated 10.08.2021; *Mobilox Innovation Pvt. Ltd. V. Kirusa Software Pvt. Ltd.* Reported in (2008) 1 SCC 353 para and *Transmission Corporation of Andhra Pradesh V. Equipments Conductors and Cables Limited* reported in (2019) 12 SCC 697]**

31. That in the instant case the existence of a dispute is not only not denied and on the contrary has been admitted by the Operational creditor in their counter reply to the affidavit at paragraph 9, line 4 ***"that the applicant submits that there exists a dispute between the parties but the same relates to different transaction...."*** and as such in the face of such admission and the law holding the field as enumerated above this Hon'ble Tribunal has no option but to reject the instant application with costs to the Corporate debtor.

32. That the Corporate Debtor further submits that Operational Creditor has mentioned in its application at Part 4, that the amount has fallen due on from 17.03.2018 whereas the subject matter of the instant application (bill no. BL/813/1718/00561 is dated 20.03.2019, bill no. BL/813/1819/00034 dated 29.05.2018 and bill no. BL/813/1819/00057 dated 20.06.2018) which were raised after 17.03.2018 (date alleged to have fallen due) thus establishing the fact that pursuant to the agreement of the parties there existed a running account between the parties over which there existed a dispute and there were no separate transactions as alleged by the Operational Creditor. The malafide of the Operational Creditor in initiating the instant proceedings as a counter blast is further established by such act in as much as demand of an amount was sought to be made even before a bill/invoice was raised and the Operational Creditor is not even clear as to

against which bill they are raising their demands and only on that account the application is liable to be rejected with costs to the Corporate Debtor.

33. That it is submitted that the bills in respect of which the present proceedings have been initiated are dated 16.02.2018, 03.03.2018, 06.03.2018, 20.03.2018, 29.05.2018, 20.06.2018 at **Page 58 of the application** which totals to a sum of Rs. 4,13,990.00 (Rs. Four Lakhs Thirteen Thousand Nine Hundred Ninety Only) along with interest stands claimed at Rs.5,58,781.00 (Rupees Five Lakhs Fifty-Eight Thousand and Seventy Hundred Eight One Only).

34. **A perusal of the statement of account annexed to the application at page 69 would reveal that an amount of Rs. 8,09,431.00 (Rs. Eight Lakhs Nine Thousand Four Hundred Thirty-One Only) was paid on 09.05.2018 by the Corporate debtor to the Operational creditor and further an amount of Rs. 5,16,037.00 (Rs. Five Lakhs Sixteen Thousand and Thirty-Seven Only) was paid on 14.09.2018 by the Corporate debtor to the Operational creditor (at page 16 of Counter reply on affidavit) thereby totally to a sum of Rs. 13,23,468.00 (Rs Thirteen Lakhs Twenty-Three Thousand Four Hundred Sixty-Eight Only) which has been accepted by the Operational Creditor and as such the instant proceedings are nothing but an abuse of the process of law by the Operational Creditor to subvert their liability towards the Corporate Debtor in the maker of which there already exists a long pending dispute.**

35. That the authority of filing of this instant applicant is highly disputed as the Operational Creditor has failed to support the authority of filing by proper Board resolution hence the present application is liable to be dismissed.

36. That the Corporate debtor has categorically denied the receipts of Demand Notice dated 03.01.2020 at Page 14-25 of the application of Operational Creditor and without admitting but for the sake of submission to say herein that if it would have served then also the reply to the said would be in the manner that there exist pre-

existed dispute to pending settlement of corporate debtor in regards to invoice no. 8130004700 amount to Rs. 23,02,612.00 (Rupees Twenty-Three Lakhs Two Thousand Six Hundred and Two) to which the Corporate debtor has legally enforceable demand against Operational Creditor.

37. It is further submitted that the Hon'ble Supreme Court in the case of ***Innovative Industries V. ICICI bank limited reported in (2018) 1 SCC 407*** held that the scheme of the code is to ensure that when a default takes place, in the sense that the debts demand due and is not paid, the Insolvency Resolution process begins. In the present case and in the light of aforesaid discussion and in the light of Counter demand of the Corporate Debtor to the tune of Rs.47,45,506.77 (Rs. Forty-Seven Lakhs Forty-Five Thousand Five Hundred Six and Seventy-Seven Paise Only) there is default and hence the Insolvency Resolution process cannot be triggered against the Corporate Debtor.

38. The Corporate Debtor relied on and submitted judgments of the following authorities:

1. ***Mobilox Innovation Pvt Ltd V. Kirusa Software Pvt Ltd; (2008) 1 SCC***
2. ***Innovative Industries V. ICICI bank limited; (2018) 1 SCC 407.***
3. ***Transmission Corporation of Andhra Pradesh V. Equipment's Conductions and Cables limited; (2019) 12 SCC 697***
4. ***Kissan V. Vijay Nirman Pvt. Ltd; (2018) 17 SCC 662.***
5. ***Kay Bouvet Engineering Ltd V. Overseas Infrastructure Alliance(India) Private Ltd; Civil Appeal No. 1137 of 2019 at Supreme Court of India.***
6. ***Allied Silica Ltd V. Tata Chemical Ltd; (2021) 4 SCC 515.***

39. That the Corporate Debtor humbly submits that in view of the attending facts and circumstances of the instant case and the law as laid down by the Hon'ble Supreme Court of India, **the instant application filed by the Applicant/ Operational Creditor is liable to be dismissed with costs to the Corporate Debtor.**

40. The Petitioner has further submitted in its affidavit dated 14.07.2021 that:
- i. That the Respondent's claim that the Applicant has tried best to conceal/suppress material facts by not disclosing the facts relating to the FIR dated 05.07.2017, Complaint dated 04.12.2018 as well as the notice dated 21.07.2017 in our Company Petition is totally misleading in as much as the Applicant has neither concealed not suppressed any material fact since the said FIR, Complaints and the Notice relates to a different transactions not relating to the subject transaction, which shows that he Corporate Debtor has wrongly and deliberately trying to club the transactions and make out a wrongful claim, and in that view of the matter, the contentions of the Corporate Debtor being not sustainable the instant Counter is liable to be rejected with compensatory costs.
 - ii. That the Applicant has never tried to recover undue money from the Corporate Debtor. **The Applicant might on some occasions, issued consolidated bills** and the payment was also made on the consolidated bills, but that does not at all imply that the transactions are all inter-related. The matter of demanding loss from the Applicant for their alleged illegal activities cannot be a subject matter of the instant proceeding, and the Applicant has not made any vague, misleading and incorrect statement in the Company petition and the Corporate Debtor is put to the strictest proof thereon. The copies of Ledger Account/Balance Sheet which have been annexed as Annexures- 1,2 and 3 to the Counter will not come to its aid for the Corporate Debtor and the same ought not to be relied upon by this Hon'ble Tribunal.
 - iii. That while categorically denying the correctness of the averments made in the Paragraph 2(iii) of the Counter, Applicant reiterates what it has stated in this regard and further states that the Applicant has never made any vexatious, frivolous and cryptic statements in order to mislead this Hon'ble Court and the Corporate Debtor is put to the strictest proof thereon.

- iv. That the Applicant further submits that the citations of the Hon'ble Supreme Court will not come to its aid for the Corporate Debtor in as much as the Hon'ble Supreme Court has interpreted the expression existence of dispute in a different pretext not similar to that of the instant proceeding. The Applicant submits that there exists a dispute between the parties but the same relates to a different transaction, not at all related to the subject transactions as categorically reiterated by the Applicant. The amount relating to the subject transactions are all undisputed, and as such, the claims and contentions of the Corporate Debtor ought not be held sustainable and maintainable, the instant Counter is liable to be summarily dismissed with compensatory costs.
- v. That the instant Counter is an abuse of the process of the Court and is liable to be rejected.

41. The matter was taken up and heard on 06.01.2021; 23.02.2021; 03.05.2021; 22.06.2021 and 04.08.2021.

ORDER

1. Heard the Counsels of both the sides at length, perused the Documents, Affidavits filed. It is found the following from the Documents, Affidavits submitted by both the sides:

- i. A work order dated **19.04.2017** was made by and between the Operational Creditor and the Corporate Debtor, binding the Operational Creditor to transport various goods like as Ferro Silicon from Upper Baliyan, Umtru Road, Ri-Bhoi, Byrnihat, Meghalaya-793101 to the various parts of India.
- ii. The Operational Creditor was engaged by the Corporate Debtor for transportation of Ferro Silicon from the manufacturing unit of the Corporate Debtor to various plants of Steel Authority of India Limited situated in different parts of India and for that the Work Order No. PCPL/156/17-18/145 dated 19.04.2017 was issued to

Surat Goods Transport Pvt. Ltd. under clear acknowledgement and acceptance of Operational Creditor thereby amongst other as per Clause 4 of the said Work Order: **“In case of delay beyond delivery schedule, non- delivery police report should be made available to us with value of our consignment which shall be refunded to you after realization of our claim from the insurance company”**.

- iii. **In the present case, one consignment of Ferro Silicon sent to SAIL, IISCO steel plant through the Operational Creditor on 21.06.2017 vide truck no. NL0211644 under invoice No. 0087, Consignment Note No. 8130004700 was rejected on 04.07.2017 by Steel Authority of India Limited, IISCO Steel Plant due to mixing of dust with materials in transit. Thereafter a FIR dated 05.07.2017 has been lodged by the CD with the Byrnihat Police Station against the Applicant/Operational Creditor including its Truck driver. An intimation has been given by the CD to the operational creditor vide letter no. PCPL/156/17-18/703 dated 10.07.2017 and to the Insurance Company “The Oriental Insurance Company Ltd” on 13.07.2017. The said consignment has been completely rejected by IISCO Steel Plant, Burnpur vide their mail dated 13.07.2017 and for the said loss of entire consignment of Rs. 23,02,612.00 (Rupees Twenty-Three Lakhs Two Thousand Six Hundred and Twelve), the Corporate Debtor has sent notice dated 21/07/2017 to the OC under Section 10 of the Carriers Act.**
- iv. **It is observed that the entire consignment in invoices no. 0087 dated 21.06.2017 is stuck up due to the rejection of said material by the IISCO plant vide their mail dated**

13.07.2017 and rejection of the claim by the insurance company on account of theft on 01.03.2021

- v. On the Other hand, the Operational Creditor raised **6 (Six)** bills upon the Corporate Debtor. The Corporate Debtor after receiving the bills failed to make any payments of the bills dated- **16.02.2018; 03.03.2018; 06.03.2018; 20.03.2018; 29.05.2018** and **20.06.2018**. Subsequently, the Operational Creditor duly requested the Corporate Debtor in writing to pay the said dues vide letter dated **17th May, 2019**. However, after receiving the said letter dated 17.05.2019, the Corporate Debtor neither gave any reply thereto nor any amount in respect of the above 6 (nos.) invoices.
- vi. **The CD has filed its Bank statement (IOB) wherein, it is shown that the CD has paid Rs. 5,16,037.00 (Rupees Five Lakhs Sixteen Thousand Thirty-Seven Only) and Rs. 8,09,431.00 (Rupees Eight Lakhs Nine Thousand Four Hundred Thirty-One Only) to the OC on 14.09.2018 and 10.05.2018 respectively (Page No. 16 and 19 of the Reply Affidavit of the CD). These two payments have been made not only during the period of the six bills raised by the OC but also after the last bill dated 20.06.2018 raised by the OC. Hence, the contention of the CD that it is a running account, not paid on the basis of each invoice, is found to be correct.**
- vii. **The OC has admitted in its affidavit [counter reply to affidavit at paragraph no. 9, line no. 4] "that the applicant submits that there exists a dispute between the parties but the same relates to different transactions." On the other hand, the argument of the OC that, it is not a running account does not hold good as the payments are made by**

the CD in consolidated manner. It is also observed that the OC has filed its bank account (HDFC) for the period 01.05.2018 to 15.05.2018 (page 69 of the Application) but it has enclosed the entries of the account only up to 09.05.2018 just before the date of payment by the CD on 10.05.2018. Moreover, it has not filed its Bank Statement for the date of 14.09.2018, when the CD has paid Rs. 5,16,037.00 (Rupees Five Lakhs Sixteen Thousand Thirty-Seven Only). Had the OC filed the above bank statement, it could have been proved by OC itself that this is a running account.

- viii. It appears that the OC has not filed its bank statement of the relevant period deliberately to justify its claim that it is not a running account.
- ix. Moreover, one main condition is found from the work order dated 19.04.2017 made between the OC and CD that "In case of delay delivery schedule, with value of our consignment which shall be refunded to you after realization of our claim from insurance company."
- x. In this case the entire consignment is stuck up, FIR filed, finally, the insurance company rejected the claim on 01.03.2021. Hence, as per the condition of the work order, the OC is not entitled to get the payment as claimed.

2. Considering the abovementioned facts, we are of considered view that there is an existence of dispute from 04.07.2017 i.e. well before the issuance of the demand notice by the OC on 17.05.2019. As per the provision of IBC 2016, an Application filed under Sec 9 Of IBC needs to be rejected if there is an existence of Disputes prior to the issue of Demand notice by the OC upon CD.

3. Hence, this application filed under section 9 of the IBC, 2016 is hereby rejected.

4. This Application is rejected with the aforesaid observations so as to no costs.

Sd/-
(Prasanta Kumar Mohanty)
Member (Technical) &
Adjudicating Authority
//R.M//D// 09.09.2021//

Sd/-
(H. V. Subba Rao)
Member (Judicial) &
Adjudicating Authority

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**Review Petition No.01/GB/2018
IN
C.P.No.14/GB/2017**

Coram:

**Hon'ble Shri H. V. Subba Rao, Member (J) : Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T): Video
Conference**

**ATTENDANCE-CUM- ORDER SHEET OF THE HEARING OF GUWAHATI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.09.2021**

Name of the Company: Goel Marketing and Distribution Co. Ltd.& Ors.

V/s

Mukesh Goel and others

Section of the Companies Act: Under Section 420(2) of the Companies Act, 2013

S. NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	MR. RAKESH DUBEY	Advocate	Petitioner	Present in Video Conference
2.	MR. ANKIT JAIN	Advocate	Respondent	Conference

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.

**Sd/-
(Prasanta Kumar Mohanty)
Member (Technical)**

**Sd/-
(H. V. Subba Rao)
Member (Judicial)**

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

**Review Petition No.01/GB/2018
IN
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1.	MR. RAKESH DUBEY	Advocate	Petitioner	Present in Video Conference
2.	MR. ANKIT JAIN	Advocate	Respondent	

ORDER

[Per se: Prasanta Kumar Mohanty, Member (T)]

1. That the present Review Petition (742 Pages) has been filed by the Petitioners for setting aside the Judgment and order dated 04.05.2018 passed by this Hon'ble Tribunal as modified by the order dated 21.05.2018 in Company Petition No. 14/2017 under section 420 of the Companies Act, 2013.

- 2. The Review Petitioners in their written arguments submit that they were arrayed as Respondent Nos. 1 to 5 in the Company Petition and that while passing the impugned Judgment and order dated 04.05.2018, certain errors apparent on the face of the records have crept in the impugned Judgment and order dated 04.05.2018. Moreover, there are many issues raised by the Review Petitioners/ Respondent Nos. 1 to 5 in the Company Petition, which have either not been referred to in the Judgment or the same have not been adjudicated by this Hon'ble Tribunal and as such the Review Petitioners have approached this Hon'ble Tribunal.**
- 3. That the respondent no. 1 to 6 to the Review Petition/Company petitioners had filed the Company Petition No. 14/2017 against the Review Petitioners/ Respondent Nos. 1 to 5 under section 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement against the Review Petitioners/ Respondent Nos. 1 to 5 seeking various relief which are enumerated in the Company Petition filed by the Company Petitioners, prominent among them was to restore the Petitioner No. 1 and Petitioner No.2 as Whole Time Directors of the Review Petitioner No. 1/ Respondent No.1.**
- 4. That the Company Petitioners have around 47.61 % paid up share capital of the Review Petitioner No. 1 Company whereas the Review Petitioners Nos. 2 to 5 along with Goel Trade Pvt. Ltd. have control over 52.39 % paid up Share Capital of the Review Petitioner/Respondent No.1 Company.**
- 5. That the case made out by the Company Petitioners was that the Company Petitioner Nos. 1 and 2 were threatened by the Review Petitioner No. 2 and they were forced to leave Guwahati and had to start their independent businesses thereby giving up their control over the Review Petitioner No. 1 Company. The main contentions raised by the Company Petitioners were the following:**
 - i. Illegal and unauthorized removal of both petitioners Nos. 1 and 2 as Directors of the Company**

- ii. Illegal and unauthorized induction of the respondent nos. 3 and 4 as Directors of the Company**
 - iii. Illegal and unauthorized convening of the Extra Ordinary General Meeting of the Company on 23.03.2016.**
 - iv. Illegal and unauthorized convening of the Annual General Meeting of the Company on 30.09.2016**
 - v. Illegal and unauthorized convening of the Board Meetings of the Board of Directors of the Company from March, 2016 onwards without serving any notice of such Board meeting**
 - vi. Manipulating the Statutory record**
 - vii. Illegal transfer of 60000 Equity Shares by Mount View Highrise Pvt. Ltd., Om Namah Shivaya Agencies Pvt. Ltd. and Nortel Textiles Pvt. Ltd. in favour of Mrs. Anita Goel.**
- 6. That the Review Petitioners/Respondent Nos. 1 to 5 in The Company Petition filed their counter affidavit and denied all the allegations levelled by the Company Petitioners. The Review Petitioners/Respondent Nos. 1 to 5 also highlighted the false and fabricated story built up by the Company Petitioners and confronted them with documentary evidence. However, it is pertinent to mention herein that the Company Petitioner Nos. 1 and 2 had taken away all the statutory records and relevant documents of the Company and though they had resigned from the post of Directors, they wanted to take advantage of the situation The Review Petitioners / Respondent Nos. I to 5 also highlighted the suppression of facts by the Company Petitioners including the illegal and arbitrary manner the Extra Ordinary General Meeting (EOGM) was held on 18.08.2017, which is now being denied by the Learned Counsel of the Respondents to the Review Petition/Company Petitioners during the course of hearing held on 21.02.2019. The Review Petitioners have enclosed herewith a compact disc containing the recordings of EOGM held on 18.08.2017, which belies the contention of the company petitioners.**

7. That the Company Petitioners also filed a rejoinder merely denying the averments made in the counter affidavit, however, without dislodging the documentary materials submitted by the Review Petitioners/Respondent Nos. 1 To 5 to the Company Petition.
8. That thereafter the Review Petitioners/Respondent Nos. 1 to 5 to the Company Petition filed their sur —rejoinder denying the correctness of the contentions made by the Company Petitioners in their rejoinder. The Review Petitioners had raised many issues in the said sur —rejoinder.
9. That the Review Petitioners/Respondent Nos. 1 to 5 to the Company Petition state that during the pendency of the Company Petition, the Annual General Meeting of the Company for the year 2017 was held on 26.09.2017 wherein the Review Petitioner No. 3 was re-appointed as Director, who retired by rotation. The resolutions of the said AGM were challenged by the Company Petitioners in an Interlocutory Application, wherein two relevant prayers were made. One being reinstatement of the Petitioner Nos. 1 and 2 as Directors of the Company, meaning thereby that their resignation was from the post of Directors. Secondly, the Company Petitioners had sought for declaring the AGM as null and void.
10. That the Review Petitioners state that the Company Petitioners also filed their written argument in Company Petition No. 14/2017, whereby they tried to improve their case on the factual as well as on legal aspects.
11. **That this Hon'ble Tribunal after hearing the parties allowed the Company Petition No. 14/2017 by reinstating the Company Petitioners Nos. 1 and 2 as Whole Time Directors of the Company with effect from 09.03.2016 and declaring the Board Meeting dated 10.03.2016 and EOGM dated 23.03.2016 as null and void, and all other Board Meetings thereafter as null and void, however without affecting the rights of third parties. The Operative Directions are contained in paragraph 95 of the said Judgment and order dated 04.05.2018. Be it stated herein that the aforesaid Judgment was later on modified by order dated 21.05.2018.**

12. According to the Review Petitioners, there are many errors which have crept in the Judgment and order dated 04.05.2018 passed in Company Petition No. 14/2017 as modified by order dated 21.05.2018. The Review Petitioners did not file any appeal against the Impugned Judgment and order dated 04.05.2018 passed in Company Petition No. 14/2017 as modified by order dated 21.05.2018 and as such the present petition is maintainable, which has been filed within the period of limitation. Since the error apparent on the face of record are not required to be found out by a long drawn process, the errors/mistakes which have crept in the Impugned Judgment and order dated 04.05.2018 and which are liable to be rectified within the parameter of section 420(2) of the Companies Act, 2013 are enumerated herein below:

A. An error has crept in wherein at the cause title of the Judgment as well as in the First Paragraph of the Judgment, it has been indicated that C.P. No. 14/241/242/GB/2017 has been adjudicated under section 397/398 of the Companies Act 1956. These are perhaps typographical errors which have crept in Judgment and order dated 04.5.2018 and as such the same are required to be review/ amended.

B. The Company Petitioners Nos. 1 and 2, Shri Mukesh Goel and Shri Ritesh Goel had resigned from the posts of Directors of the company and to that effect Form DIR 12 was filed on behalf of the Company whereas Form DIR 11 was filed by the Petitioner Nos. 1 and 2. Though filing of DIR 12 was interfered by this Hon'ble Tribunal but no such finding has been given in the Judgment and order dated 04.05.2018 by this Hon'ble Tribunal as regard the filing of DIR 11. Be it stated herein that the petitioners have tried to challenge the filing of DIR 11 by stating that the same was filed by fraud with the connivance of the professional, but nothing concrete could be established by the petitioners. Though they had averred in their company petition as well as in their rejoinder that they would initiate appropriate steps against the professional, no such steps

were taken by the petitioners and not even an FIR was lodged for the alleged misuse of their digital signature. The filing of DIR 11 and the subsequent conduct of the petitioners of remaining silent for more than a year is a conclusive proof that the petitioners had resigned from the post of Directors. Assuming but not admitting that the contention of the petitioners is correct that they had resigned from the post of Whole Time Directors and not from the post of Directors, then the most obvious question that is staring on their face is that how the company and Board of Directors could have functioned for more than a year without the participation of other Directors. The Companies Act of 2013 provides under section 173 that every Director is equally responsible for calling the meeting of the Board of Directors at regular intervals however there is conspicuous silent as to why they did not take any steps in this regard, which gives credence to the contention of the respondents that the petitioners had in fact resigned from the post of Directors and therefore, they were not required to carry out the responsibilities of Directors. **It was only after they took away the records and they could not force for settlement on their terms and conditions, they built up a false story of being threatened by Review Petitioner No. 2 and false allegations levelled against them and finally approached this Hon'ble Tribunal by filing CP No. 14/2017.** Be it stated herein that this Hon'ble Tribunal, while rendering the Impugned Judgment and order dated 04.05.2018, has not interfered with the filling of Forms DIR 11 by the Petitioners Nos. 1 And 2 in spite of allegations made by the Petitioners regarding misuse of digital signature and as on date, the same are still valid. The Petitioners have failed to prove the misuse of their digital signature whereas the Respondents/Review Petitioners have contended that the Petitioners had voluntarily resigned from Directorship and the Forms DIR 11 were filed validly in absence of anything contrary to

record. However, while rendering the impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018, this Hon'ble Court did not adjudicate upon the said issue which is the most important issue raised in company petition having very serious consequences. Therefore, a very serious error apparent on the face of the record has crept in the impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018. Since the issue of status of Form DIR 11 has not been decided by this Hon'ble Tribunal and as such the said impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018 is required to be reviewed/amended.

- C. The direction passed by this Hon'ble Tribunal in restoration of the Petitioner Nos. 1 and 2 as Whole Time Directors of the Review Petitioner No.1/Respondent No.1 Company with effect from 09.03.2016 reflects an error apparent on the record of the case as this Hon'ble Tribunal has neither set aside or declared null and void the filing of DIR 11 and in absence of such declaration regarding Form DIR 11, this Hon'ble Tribunal could not have restored the position of the petitioner nos. 1 and 2 as Whole Time Directors. On this ground also, the impugned Judgment and Order dated 04.05.2018 as modified by order dated 21.05.2018 is liable to be reviewed / amended. Moreover, it is their own case that the Company Petitioners Nos. 1 and 2 had resigned due to their preoccupation and they have requested the Board of Directors to submit the necessary form with the office of the Registrar of Companies.
- D. The Company Petitioners Nos. 1 and 2 were also aware about the implication of the DIR 11 and therefore, their first prayer of seeking declaration that Petitioner Nos.1 and 2 are Whole Time Director of the Respondent No. 1 Company could not have been granted without there being any adjudication on the legality and validity of Form DIR 11. Therefore, since such adjudication has not been done

an error apparent on the face of record has crept in the impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018 and the same needs to be rectified/amended.

- E. Neither the Petitioner Nos. 1 and 2 nor the Respondent No.1 Company could recall the Form DIR 11 and since there is no finding by this Hon'ble Tribunal on DIR 11, the same remains on record. The implication of impugned Judgment and Order dated 04.05.2018 as modified by order dated 21.05.2018 would be that after cancelation of earlier Forms DIR 12 filed on behalf of the company, The Petitioner Nos. 1 And 2 would be restored as Directors in the portal of the Registrar of Companies but the status would be shown as 'Resigned' because of the effect of DIR 11. This aspect of the matter is very much known to the Company Petitioners and still they are not seeking any review/amendment on that count because they know that they have not been able to prove their allegation of misuse of their digital signatures. Therefore, they have found out a new and innovative way to overcome the situation and that is by way of passing a resolution in the meeting of Board of Directors called by Petitioner No.1 held at New Delhi on 15.06.2018 to file a fresh DIR 12 in the garb of restoration of the petitioners as Directors. The effect of the said resolution would be that the fresh filing of DIR 12 would amount to fresh appointment of the Petitioner Nos. 1 and 2 as Directors and the same would nullify the DIR 11. The petitioners have projected in the notice of the Board of Directors meeting to be held on 15.06.2018 as if this the said DIR 12 forms are to be filed pursuant to the directions given by this Hon'ble Tribunal in terms of the impugned Judgment and Order dated 04.05.2018 as modified by order dated 21.05.2018. Therefore, on this count also, a clarification /amendment/review of the impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018 is needed.

F. While rendering the impugned Judgment and order dated 04.05.2018, this Hon'ble Tribunal has come to a conclusion that the Petitioners had given consent for the EOGM scheduled on 23.03.2016. However, the Petitioners had denied giving such consent letters and in their pleadings, they have pleaded that they had kept unsigned letters with the Respondent /Review Petitioner No.2 in good faith. The said stand was further expanded in their written arguments by stating that all the Petitioners had kept blank signed papers with the Respondent No.2. This aspect of the matter has not been decided by this Hon'ble Tribunal, which is very relevant for the purpose of understanding the conduct of the petitioners, which seem to be self-contradictory. Their basis case was that they were threatened by the Respondent No. 2 and on the same breath they submit that they had submitted blank papers with Respondent No. 2 in good faith. Both these versions cannot stand together but no finding has been given by this Hon'ble Tribunal on this aspect and as such the impugned Judgment dated 04.05.2018 is liable to be reviewed / amended.

G. While adjudicating the issues regarding acceptance of the resignation of the Petitioner Nos. 1 and 2 in the Company Petition proceeded on the basis that the same is required to be accepted in the meetings of the company and more particularly in the extraordinary general meetings held on 23.03.2016. Since this Hon'ble Tribunal had held that shareholders were not issued proper notice, this Hon'ble Tribunal was pleased to declare the EOGM held on 23.03.2016 as null and void and consequently held that since the resignation were not approved held as para 91 of the Judgment that the resignation of Petitioner Nos. 1 And 2 too could have been legally accepted by the members present in such a meeting and hence concluded that Petitioner 1 And 2 Whole Time Director of the Respondent No 1 Company as on 23.03.2016 and beyond. The Review Petitioners/Respondents in the Company Petition humbly

state and submit that errors have been committed by the Tribunal in deciding the issues of acceptance of the resignation of the Petitioner Nos. 1 and 2 as Whole Time Director of the Respondent No 1 Company. It is further submitted such a requirement of accepting the resignation of director in a meeting of a company was mandated under the provision of old company act of 1956 but requirement under the new Companies Act 2013 has undergone a massive change. The Companies Act 2013 contains specific provision in the form of section 168, which was not there in the earlier Act of 1956. Be it stated herein that in terms of Section 168 of the company act 2013 there is no requirement of acceptance of resignation of the director by the Board of the Company in the meetings.

Sub section (1) of section 168 stipulates that a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the register in such manner, within such time and DR 11 may be prescribed and shall also place the fact of such resignation in the reports of the Director laid in the immediately following general meeting by the company.

Provided that a director shall also forwarded a copy of his resignation along with detailed reason for the resignation to the register within 30 day of resignation in such manner as may be prescribed.

Sub section (2) of sec 168 provides resignation of director shall take effect from the date on which notice is received by the company or the date, if any specified by the director in notice, whichever is later.

Therefore, a reading a provision sec 168 of company act 2013 would go to show that there is no requirement under the Act of 2013 for acceptance of the resignation of the director and the resignation takes effect from the date on which notice is received

by the company. The necessary forms being DIR 12 and DIR 11 are required to be filed by the company and concerned Director separately. It is the respectful submission of the Review Petitioners that filling of DIR 12 by the company is not depended upon holding any meeting for acceptance of resignation. The company can file DIR 12 after receipt of notice of resignation from the Resigning Director. In the present case, it is an admitted position that Company Petitioner Nos. 1 And 2 submitted their resignation on 23.03.16 which were taken note of by the company and the Board and subsequently DIR 12 was filled on 02.04.2016. The fact of resignation of the Petitioner Nos. 1 and 2 was also mentioned in the report of the Board of Directors of the respondent no. 1 company. The Review Petitioners state and submit that the Hon'ble Tribunal while rendering the impugned order dated 04.05.2018 did not consider the implication of sec 168 of Companies Act 2013 read with filing of Form DIR 11 in deciding the issues regarding acceptance of Resignation Petitioner Nos. 1 and 2 held at since the said resignation could not have been legally accepted in the meeting dated 23.03.2018.

Therefore, an error apparent on the face of record has crept in the impugned judgment and order dated 04.05.2018 and as such the said judgment and order is liable to be reviewed/ amended. For that one of the most relevant facts has not been taken note of by the Hon'ble Tribunal in rendering the impugned Judgment and order dated 04.05.2018 and that is regarding filling of DIR-11 by the resigning directors, i.e., Petitioner Nos. 1 and 2 in the Company Petition. Be it stated herein that the petitioners had alleged that the digital signature were misused by professional for filling the DIR-11, which contention has been stoutly denied by the Review Petitioners/Respondents in company petition. As the Petitioners had not made the concerned professionals party Respondents in the Company Petition nor any FIR or criminal proceedings instituted by

the Petitioners Nos. 1 and 2, in absence of which, it could not be said that their digital signatures were misused. The said aspect of the matter had not been considered by the Hon'ble Tribunal and as such an error apparent on the face of the record has crept in the order dated 04.05.2018. which calls for review/amendment of the Judgment dated 04.05.2018.

- H. The petitioners had laid the foundation of their case on falsehood by stating that the proprietorship business, which was taken over by the Respondent No. 1 Company, was started by the Petitioner Nos. 1 and 2 however the respondents have brought on record the takeover agreement by which the proprietorship business of the respondent no. 2 was taken over by the company. This aspect has also not been considered by this Hon'ble Tribunal and the Tribunal has proceeded on the basis that the company was a private limited which was formed by three brothers. Be it stated herein that the company is a public limited company. On this ground also, the impugned Judgment and order dated 04.05.2018 is liable to be interfered with.
- I. The Respondents/Review Petitioners have specifically pleaded that the Petitioner No. 1 and 2 had been using the 16000 sq. ft. godown at the factory premises of the company and had illegally taken stock of the company worth Rs. 29,00,000.00 (Rupees Twenty-Nine Lakhs Only) and they had also stored their own goods in the said godown. The said fact has also been confirmed by the recent notice dated 31.05.2018 for holding the Board Meeting on 15.06.2018 at New Delhi, wherein a specific resolution is sought to be taken to take out goods in the godown of the company which do not belong to the company, without specifically stating about the ownership of those goods, however, impliedly, this can be construed to be goods belonging to the Petitioner No. 1 and 2 and therefore they want to take the goods out of the godown. This aspect of the matter has also not been decided by this Hon'ble Tribunal as such an error

apparent on record has crept in the Judgment and order dated 04.05.2018 for which it is required to be reviewed.

- J. The petitioners had suppressed about the Deed of Partition dated 04.02.2017 in their Company Petition, which would go to show that in spite of the threat they had arrived at the settlement and as such their version of the story cannot be relied upon. Though the Ramkrishna Goel & Sons, HUF dissolved and the assets were transferred and the accounts were closed, yet by suppressing the said facts the petitioners still claimed to be owner of shares belonging to Ramkrishna Goel & Sons, HUF. This aspect of the matter has also not been adjudicated upon by this Hon'ble Tribunal and on this count, the impugned Judgment and order dated 04.05.2018 is liable to be reviewed.
- K. This Hon'ble Tribunal has erred in law in holding that on 10.03.2016, no Board of Directors meeting could be validly held as Petitioner Nos. 1 and 2 did not attend the meeting and the same would not fulfil the quorum. However, the facts pleaded by the Respondents was not considered by this Hon'ble Tribunal that that documents were taken by the Petitioner Nos. 1 and 2. The conduct of the parties become very relevant and in the present case, the Review Petitioners/Respondents have never made any false averments whereas the Petitioners have made many false averments some of the them are indicated herein below:
- i. Proprietorship business was started by them
 - ii. They were threatened by the Respondent No. 2
 - iii. They had submitted blank papers to the Respondent No. 2 in good faith.
 - iv. None of them attended Board meeting on 10.03.2016
 - v. They have not illegally occupied the company's godown.
 - vi. They have not threatened company's employees (though FIR was lodged)
 - vii. EOGM held on 16.08.2018

- viii. Meeting with Elderly for Settlement
- ix. Signing of Deed of Partition and obtaining cheques from Ramkrishna Goel & Sons firm
- x. Visit to the Chartered Accountant office for split of the Company

These issues though raised by the Review Petitioners/Respondent Nos. 1 to 5 were not either not taken note of by this Hon'ble Tribunal nor adjudicated upon and therefore, an error apparent on the face of record has crept in the impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018. Hence, the impugned Judgment and order dated 04.05.2018 is required to be rectified.

- L. For that though the Company Petitioners have pleaded in paragraph 7.39 of the Company Petition that Petitioners Nos. 1 and 2 had on numerous occasions in the past had asked the Respondent No. 2 to call the Board Meetings and the Annual General Meetings of the Company as per the requirements of Companies Act, 2013, but they had failed to substantiate their claim by any sort of evidence. One fact is clear that they were aware of holding such meetings from time to time. In that case, a very pertinent question emerges as to how the Review Petitioner No. 1 could be holding Board meetings alone, being the lone Director present at Guwahati and why the Petitioner Nos. 1 and 2 could not hold a Board Meeting in Delhi as they have tried to hold the same on 15.06.2018 vide notice dated 31.05.2018. Moreover, the Company Petitioners have not denied the contents of their resignation letters dated 23.03.2016, according to which they have resigned from the Whole Time Directorship of the Company (even assuming but not admitting that their version is correct). The Company Petitioners No. 1 and 2 have also left a question unanswered as how and when they left Guwahati without their resignation accepted by the Board of Directors of the Company to

do their own business at Delhi, knowing very well that there were three Directors in the company and a lone Director cannot form a quorum for holding the Board meeting. Therefore, these issues coupled with various false statements hit the credibility of the company petitioners and their statements cannot be taken on face value. On this ground also, the impugned Judgment and order dated 04.05.2018 as modified by order dated 21.05.2018 is liable to be rectified/ amended.

M. If there was such an enmity between the Company Petitioners and Review Petitioner No.2, then why the Deed of Partition dated 04.02.2017 was accepted and executed by the parties and why the Ramkrishna Goel & Sons HUF was dissolved and shares were transferred in favour of the Review Petitioner No. 2's HUF and amount was shared by the Company Petitioner Nos. 1 and 2. The said acts are indicative of the fact that the Company Petitioners were not interested in the Company and it is only later on that they change their stand. This aspect of the matter has not been considered by this Hon'ble Tribunal while passing the impugned Judgment and order dated 04.05.2018 and as such the same is required to be reviewed/amended.

N. The things before the Registrar of Companies is a notice to all and sundry regarding the affairs of the Company. Be it stated herein that DIR 12 forms were filed immediately after the resignation of the Company Petitioner Nos. 1 and 2 and it is not conceivable that the Company Petitioners were not aware about such filings and in the facts and circumstances of the case, they could not have been given the benefit of doubt of being unaware about the proceedings of the company in which they claim to be Whole Time Directors and therefore, the delay in this aspect is fatal, not on the perspective of limitation but on the perspective of conduct and laches, which this

Hon'ble Tribunal has not considered. Therefore, the impugned Judgment and order dated 04.05.2018 is liable to be rectified.

O. Under the Companies Act, 1956, there was no provision for filing any form by Directors which led to many litigations as regard the effective date of resignation because of liabilities attached to the said post. However, under the Companies Act, 2013, a special form being Form DIR 11 has been prescribed for filing by the resigning Director himself and the same is filed only for resignation, which absolves him of all liabilities henceforth. Therefore, the issue of filing of DIR 11 in the facts and circumstances of the case becomes most relevant and the said issue has not been decided by this Hon'ble Tribunal, the consequence of the same is very significant. Going by the same logic as applied by this Hon'ble Tribunal in not accepting the contention of the Review Petitioners that the statutory books and records were taken away by Company Petitioner Nos.1 and 2 because the Review Petitioners had not lodged any FIR of criminal proceedings, this Hon'ble Tribunal should accept the filing of DIR 11 by the Company Petitioners Nos. 1 and 2 as they have not lodged any FIR or initiated any criminal proceedings against the professional alleged to have misuse their digital signatures. Therefore, on this very aspect, a rectification/amendment of the Judgment and Order dated 04.05.2018 is a call for justice.

P. In view of the aforesaid ground urged by the Review Petitioner, the Rectification / Review Petition should be allowed by this Hon'ble Tribunal by setting aside the impugned Judgment and order dated 04.05.2018.

13. The Respondents to the Review Petition have submitted their written arguments against the Review Petition dated 20.06.2019 wherein they submitted the following:

A. The Respondents to the Petition submitted a list of relevant dates and events which are as follows:

DATES	EVENTS
04.05.2018	Judgment was passed in CP No. 14/241/242/GB/2017 allowing the Company Petition filed by the Respondents and directing the reconstituted Board of Petitioner Company inter-alia to immediately resume the business of the Petitioner Company with effect from 10.03.2016. [@706-726 of Review)
21.05.2018	The Judgment dated 04.05.2018 was slightly incorporated towards mentioning of the judgments relied upon by the Petitioner herein. [@727-728 of Review]
21.05.2018	In order to fructify the directions passed by this Hon'ble Tribunal, the Respondent no.1 herein sent a communication to Petitioner no.2, requesting to make available the records/ accounts of the company for inspection by Respondents on 23.05.2018. No reply was received from Petitioner no.2. [@729-731 of Review]
23.05.2018	As scheduled, the Respondent no.1 and 2 reached the premises of Respondent no.1 Company along with Company Secretary and Counsel, to inspect the records/ accounts, however, the Petitioner no.2 deliberately and out rightly refused to provide the said documents, and stated that entire records of the company, including its statutory registers and accounts have been removed from the registered office of the company and sent to the Advocate for preparation of review petition to be filed against Judgment dated 04.05.2018.
25.05.2018	Being aggrieved by the refusal to provide the necessary records and documents of the company, the Respondent No.1 confronted Petitioner No.2 vide his email [@ 732-754 of Review], to which Petitioner No.2 admitted vide his mail dated 28.05.2018 about refusal of inspection [@ 29-31 of Reply to Review]. Respondent No.1 also caused to be filed a complaint to the ROC, intimating the contemptuous conduct of the Petitioners herein. [@ 25 of Reply to Review)
25.06.2018	On filing of the captioned Review Petition by the Petitioner, notice was issued and thereupon Reply dated 28.06.2018 to Review was filed by Respondents.

B. Grounds raised in the Review Petition:

- i. The Review Petition filed in the above backdrop, seeks to inter-alia raise the following primary ground:
 - ii. That this Hon'ble Tribunal had not considered alleged documents/material/ plea on the record, and therefore, the is Judgment dated 04.05.2018 is erroneous;
 - iii. That the Tribunal was allegedly required to make specific direction/observation in relation to alleged Form DIR 11 allegedly filed in relation to resignation of Respondent no.1 and 2;
 - iv. That the Tribunal allegedly erred in restoring the Respondent no.1 and 2 to their position of Directorship, without specifically declaring the alleged Form DIR 11 as null and void;
 - v. That the Tribunal allegedly erred in not deciding the issue regarding use by present Respondents, of the space of 16,000 sq. ft. in the godown company;
 - vi. That the Tribunal allegedly erred in not considering and adjudicating upon the alleged issue of Partition Deed dated 04.02.2017;
- C. The infirmities in the above grounds taken up by Review Petitioner, have been highlighted by Respondents herein in the reply filed on their behalf and as summarized herein below:
- i. **Companies Act, 2013 does not prescribe for Review Jurisdiction, as prescribed under Order 47 of the Civil Procedure Code, 1908**
 - ii. **Section 420(2) of the Companies Act, 2013, prescribes power of the Tribunal for rectification of mistake. The relevant extract thereof is reproduced as follows:**

"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.”

- iii. The above provision under Section 420(2) of Companies Act, 2013 is pari- material with Section 254(2) of the Income Tax Act. Section 254(2) of IT Act came up for examination before Delhi High Court, wherein it was observed that the power to rectify the mistake does not cover cases where a revision or review of the order is intended; and it does not cover any mistake which requires its discovery by a complicated process of investigation, argument or proof. The Court further observed that the language used in Order 47, Rule 1 of the CPC 1908, is different from the language used in Section 254(2) of the Act. [***CIT vs. Maruti Insurance Distribution Services Ltd., WP(C) No. 106/2012 para 7 G 10***] also in [***Master Construction Co. Pvt. Ltd. vs. State of Orissa (1966) 17STC360***] also in [***Baljeet Jolly vs. CIT(2000)164CTR(Del)37 - para 506***]
- iv. **Therefore, the power to rectify mistake as conferred under Section 420(2) of the Companies Act, 2013, is much narrower from the review jurisdiction as contemplated under Order 47 of CPC. As such, the power under Section 420(2) only pertains to correcting mistakes, that too if such mistake is apparent.**
- v. **The present Review Petition, having sought to lead the original arguments afresh, as led at the time passing of the Judgment dated 04.05.2018, challenges the factual findings rendered by the Tribunal in Judgment dated 04.05.2018, and is therefore, not maintainable, for failing to either identify any “mistake” in the Judgment as also for not pointing out “apparent” nature of any such mistake**

as contemplated under Section 420(2) of the Companies Act, 2013.

D. Under the garb of filing Review, the Judgment cannot be challenged in the manner as permissible only in Appellate Jurisdiction:

- i. A bare reference to the Grounds taken up in Review Petition would show that under the garb of seeking review, the Petitioners have sought to challenge the findings made by this Hon'ble Tribunal in Judgment dated 04.05.2018. Lengthy and argumentative deliberations have been made by the Petitioners to set out their challenge to the factual findings made in the Judgment. While putting forth such arguments, the Petitioner have only repeated their arguments led before the Tribunal at the time of passing of Judgment dated 04.05.2018.
- ii. The exercise of Petitioners in seeking review of Judgment dated 04.05.2018 on grounds amenable only to appellate jurisdiction, lies in conflict with the settled Judicial Prescriptions as set out below:
 - a. **Power of review cannot be confused with Appellate jurisdiction to seek rehearing and repetition of overruled arguments. [*Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd.* (2006)5SCC501-para 8];** also in [*Northern India Caterers India Ltd. vs. Lt. Governor of Delhi* (1980)2SCCI67 - para 13] also in [*Thunga Bhadra Industries Ltd. vs. Govt. of A.P.* (1964)5SCR174- para17];
 - b. In a review petition it is not open to this Court to re appreciate the evidence and reach a different conclusion. [*Kerala State Electricity Board vs. Hitech Electronics and Hydropower Ltd.* 2005 Supp. (2) SCR 517 para 10];

- c. **The power of review can be exercised for correction of mistake, but not to substitute a view. Mere possibility of two views on the subject is not a ground for review. [*Lily Thomas & Ors. vs. Union of India & Ors.* (2000) 6 Supreme Court Cases 224]**
- d. **If there is reappraisal (of facts or evidence), it would amount to exercise of appellate jurisdiction, which is not permissible in the application for review. [*High Court of Madras, Rajeshwari vs. Bhuvaneswari Cycle Mart* (2007)6MLJ47 - para I5]**

E. The present Review Petition, therefore, is not maintainable, being lying in the teeth of the above Judicial Prescriptions, and thus liable to be rejected. This, Hon'ble Tribunal, may therefore, be pleased to reject the captioned Review Petition with costs in favour of Respondents

14. At the last hearing of this matter on 24.08.2021, this Hon'ble Tribunal passed the following order:

ORDER

Date of Order: 24.08.2021

Matter is taken up today for hearing through video conferencing. Heard both the sides. Seven days' time is given to both the parties to file further submissions, if any, in 4/5 pages by exchanging copy thereof with each other.

2. Matter is reserved for orders."

15. As per the Hon'ble Tribunal Order dated 24.08.2021, the Respondents to the Review petition filed their written submissions dated 07.09.2021, wherein it made the following submissions:

A. Contemptuous Acts of the Petitioner Meriting Dismissal of the Review Petition

04.05.2018	Reasoned and detailed order was passed in CP No. 4/241/242/GB/2017 allowing the Company Petition filed by the Respondents and directing the reconstituted Board of Petitioner Company inter-alia to immediately resume the business of the Petitioner Company with effect from 10.03.2016.
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21.08.2018	The Judgment dated 04.05.2018 was slightly incorporated towards mentioning of the judgments relied upon by the Petitioner herein. Further, in order to fructify the directions passed by this Hon'ble Tribunal, the Respondent no.1 herein sent a communication to Petitioner no.2, requesting to make available the records/accounts of the company for inspection by Respondents on 23.05.2018. No reply was received from Petitioner no.2.
23.05.2018	As scheduled, the Respondent no. 1 and 2 reached the premises of Respondent no.1 Company along with Company Secretary and Counsel, to inspect the records/accounts, however, the Petitioner no.2 deliberately and out rightly refused to provide the said documents, and stated that entire records of the company, including its statutory registers and accounts have been removed from the registered office of the company and sent to the Advocate for preparation of review petition to be filed against Judgment dated 04.05.2018, such Contemptuous act itself meriting for the dismissal of the present Review Petition.
25.05.2018	Being aggrieved by the refusal to provide the necessary records and documents of the company, the Respondent no.1 confronted Petitioner no.2 vide his email to which Petitioner no.2 admitted vide his mail dated 28.05.2018 about refusal of inspection. Respondent no.1 also caused to be filed a complaint to the ROC, intimating the contemptuous conduct of the Petitioners herein.
23.07.2018	That the Respondents on refusal to provide the necessary records and documents of the company by the Petitioner, filed a Contempt Petition bearing No. 04/2018, wherein it has sought a relief for issuance of process directing compliance of the final order dated 04.05.2018 as slightly modified by order dated 21.05.2018 of this Hon'ble Tribunal and the same is also pending before the Hon'ble Tribunal for adjudication.

B. Grounds for Rejection of the Review Petition

Grounds for Review taken by the Review Petitioner	Submission on behalf of the Respondents along with the finding of the Hon'ble NCLT vide order dated 04.05.2018.
On Form DIR -11 <ul style="list-style-type: none"> The Respondent No.1 & 2 had resigned from the post of Directors of the company and in terms whereof Form DIR-11 was filed by the Petitioner No. 1 & 2. 	Respondents Submission <ul style="list-style-type: none"> It is submitted that on reconstitution of the board, all the resolutions resolved, any time after 10.03.2016 become indefensible and unenforceable law, in terms of said finding the DIR-11 which was filed by the Petitioner No1 & No2, immediately after convening Board

<p>Though filing of DIR-12 was interfered by this Hon'ble Tribunal but no such finding has been given in the Judgment and order date 04.05.2018 with regard to filing of DIR-11.</p> <ul style="list-style-type: none"> • Hon'ble Tribunal has neither set aside or declared null and void the filling of DIR-11 and in absence of such declaration regarding Form DIR-11, this Hon'ble Tribunal could not have restored the position of the Respondents as Whole Time Directors. • The Respondents are also aware about the implication of DIR-11 and therefore, their first prayer of seeking declaration that Respondents are Whole Time Directors of the Petitioner No.1 company could not have been granted without there being any adjudication on the legality and validity of Form DIR-11 	<p>meeting, however, the same has become infructuous and the consequential action to said finding was filing of DIR 12, to which Petitioners refrain itself till date of such act, which shows the malicious and contemptuous behaviour on their part.</p> <ul style="list-style-type: none"> • And on failure of such wrong interpretation of reasoned order, Petitioners have invoked the review jurisdiction as provided under Section 420(2) of the Act has very limited aspect of review being limited to the error apparent on the face of record whereas in the instant case the review Petitioners are merely trying to re appreciate the evidence and make this Hon'ble Tribunal sit as an appellate authority in the grab/guise of this Petition. That the Petition is filed to accomplish a malicious and devious motive of the petitioner to deprive the Respondents of the managements and rights of the Company. • The Hon'ble Tribunal in the detailed and reasoned Impugned Judgment categorically elaborated the fate of all the actions which was taken pursuant to 09.03.2016 and therefore the status of Form DIR-11 which was admittedly filed on 02.04.2016 is evidently null and void under the implications of the Impugned Judgment. • That this Hon'ble Tribunal has categorically held and observed the wrongdoings and malafide of the Petitioner No.2 &3 and also that the finding on all aspects of the illegally conducted Board Meeting thereby nullifying all acts/deeds in consequence of the Board meetings. Further, it is wrong on Petitioners part to interpret the finding of Tribunal and its failure to comprehend to such detailed and reasoned order of the Hon'ble Tribunal, therefore Petitioner the same does not amount to review. <p>Tribunal Findings in terms of order dated 04.05.2018</p> <ul style="list-style-type: none"> • 78. [.....] therefore, all resolutions, adopted in the said Board Meeting became void, illegal and non-est in law.
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	<ul style="list-style-type: none"> • 82. [.....] But then since all the resolutions [....] on 10.03.2016 [....] are found to be void and non-est in law, all the resolutions, adopted in EOGM, held on 23.03.2016 too became equally void and untenable in law • 90. [.....] EOGM held on 23.03.2016 too suffers from several serious legal infirmities, which reduce such a meeting to nullity [.....] therefore, all the resolutions, adopted in the meeting of Board of Director or for that matter, in the General Meeting of the Company any time after 10.03.2016 become indefensible and unenforceable law • 95 [.....] e) The BOD of the R-1 company is restored to the positions as it was on 9th March 2016 f) All acts and deeds done by the company with ROC and other authorities are also declared null and void i) [.....] resume is its business immediately and that too in accordance with prescription of law and Rule framed there under [.....]” <p>(Relevant Paragraph to be referred along with above reiterated extract from the Impugned Judgment are:71,72,73,74,76,77,83, 89)</p>
<p>On Board Meeting - 10.03.2016 and EOGM 23.03.2016</p> <ul style="list-style-type: none"> • No finding has been given by the Tribunal with respect to plea of the Respondent that they have denied consent letters and kept unsigned letters with the Petitioner in good faith. Further, blank signed papers were kept with the Petitioner. • It was stated by the on non-issuance of proper notice to shareholder, tribunal declared EOGM held on 23.03.2016 as null and void and the resignation of the Respondents could not be accepted by the members present in such 	<p>Respondents Submission</p> <ul style="list-style-type: none"> • It is submitted that the Petitioners at no instance complied with any Company secretarial standards as well as the requirements required for conveying the board meeting as prescribed under Company Act 2013. That the same is apparent from the fact that, Respondent No.1 &2 have agreed for convening the EOGM on shorter notice but the consent letter, under no circumstances discloses that the Respondents agreed to resign from the post of Director. Further, Petitioner have not been able to satisfy the Hon’ble Tribunal that EOGM was legally conducted and the requisite quorum was present for the meeting. <p>Tribunal Findings in terms of order dated 04.05.2018</p> <ul style="list-style-type: none"> • “62. Therefore, when one reads section 173(3) and 174of the Act of 2013

<p>a meeting.</p>	<p>together having regard to various guidelines, issued by the institute of ICSI, quorum Board Meeting [.....], there could not have been any valid Board Meeting, unless it is shown:</p> <ol style="list-style-type: none"> i. That the respondent has sent notice- along with the agenda of the meeting therein to the petitioner No.1 & 2 in a manner as required under section 173 of the Act of 2013. ii. That the petitioner No.1 and 2 had received such notice requiring them to remain present at such meeting. iii. That on being served with such notice, those two petitioners or at least one of them duly participated in the meeting as indicated in section 173(2). iv. That on being served with such notice, those two petitioners or at least one of them duly participated in the meeting as indicated in section 173(2). v. That the meeting of the Board, held on 10.03.2016, had the requisite quorum to adopt the resolutions, vi. specified in the agenda in the notice <ul style="list-style-type: none"> • 66. On a very careful perusal of the materials on record, the letter dated 10.03.2016 in particular found that such contention is far too away from the truth---- for---- the letter dated 10.03.2016, no impression that P-1 & P-2 were ever informed of about the purported Board meeting held on 10.03.2016 [.....] The fact that the Respondents could not produce any document to substantiate their claim on this score makes such a conclusion inevitable • 67. Further, the claim of the Respondents that such meeting attended to by P-1 & P-2 is also found to be equally away from the truth [.....] Secretarial Standard -1 requires every company to maintain separate attendance register for the Meeting of the board and Meeting of
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	<p>the Committee</p> <ul style="list-style-type: none"> 69. Thus, even if one accept [.....] being the Director of the Company, were to sign the attendance register and in that event, the production of such a register would have settled once for all the controversy on this score. But the respondents made no effort whatsoever to produce before Bench such a very vital document [.....] claim of the respondents that P-1 & P-2 had attended the Board Meeting on 10.03.2016 is nothing but a lie only.”
<p>On Board of Meeting dated 15.06.2018</p> <ul style="list-style-type: none"> That how the Petitioner could be holding Board meetings alone, being the lone Director present at Guwahati and why the Respondent could not hold a Board Meeting in Delhi as they have tried to hold the same on 15.06.2018 vide notice dated 31.05.2018. That why the Respondents left Guwahati without their resignation accepted by the Board of Directors of the Company to their own business at Delhi, knowing very well that there were three directors in the company and a lone Director cannot form a quorum for holding the Board of Meeting 	<p>Respondents Submission</p> <ul style="list-style-type: none"> Respondents are law abiding citizens and therefore as and when directed by the Hon’ble Tribunal they conducted the Board meeting dated 15.06.2018. Further, said meeting was convened in terms of statutory provisions. Notice along with agenda was priorly circulated within all directors. It is to be submitted that in terms of section 173 the board meeting can be held at any place in India. Therefore, it is submitted that in order to convene a board meeting, no statutory provision stipulates for convening the same at the registered office. It is submitted that the Respondents herein are now permanently shifting to their residence at Guwahati. <p>Tribunal Findings in terms of order dated 04.05.2018</p> <ul style="list-style-type: none"> 95 [.....] e) The BOD of the R-1 company is restored to the positions as it was on 9th March 2016 f) All acts and deeds done by the company with ROC and other authorities are also declared null and void i) [.....] resume its business immediately and that too in accordance with prescription of law and Rule framed there under [.....]”

C. Companies Act, 2013 does not prescribe for Review Jurisdiction, as prescribed under Order 47 of the Civil Procedure Code, 1908

1. Section 420(2) of the Companies Act, 2013, under which the Review Petition has been filed, prescribes power of the Tribunal for rectification of mistake. The relevant extract thereof is reproduced as follows:

"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."

2. The above provision under Section 420(2) of Companies Act, 2013 is pari- material with Section 254(2) of the Income Tax Act. Section 254(2) of IT Act came up for examination before Delhi High Court ***in CIT vs. Maruti Insurance Distribution Services Ltd., WP(C) No. 106/2012.***
3. Therefore, the power to rectify mistake as conferred under Section 420(2) of the Companies Act, 2013, is much narrower from the review jurisdiction as contemplated under Order 47 of CPC. As such, the power under Section 420(2) only pertains to correcting mistakes, that too if such mistake is apparent.
4. Further, Section 152 of CPC which lay the provision of Amendment of judgments, decrees or orders Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties, was widely interpreted by the NCLAT in ***Adish Jain vs. Sumit Bansal & Anr (2021 SCC Online NCLAT 52)***, wherein it observes that there is no express provision of review under NCLAT Rules, further power of review is not an inherent power of the NCLAT, it must be conferred by law either specifically or by necessary implication and if the Government had no power to review its own order, it is obvious that its delegated could not have reviewed its order. It also held that error must be a 'patent error'

which is 'manifest' and 'self-evident' and in our instant case Petitioner has fail to manifest error on face of record. (Relevant Para 11,15 &16)

5. The present Review Petition, having sought to lead the original arguments afresh, as led at the time passing of the Judgment dated 04.05.2018, challenges the factual findings rendered by the Tribunal in Judgment dated 04.05.2018, and is therefore, not maintainable, for neither identifying any "mistake" in the Judgment nor pointing out "apparent" nature of such mistake as contemplated under Section 420(2) of the Companies Act, 2013.

D. Under the garb of filing Review, the Judgment cannot be challenged in the manner as permissible only in Appellate Jurisdiction

1. A bare reference to the grounds taken in Review Petition would clearly indicate that under the garb of seeking review, the Petitioners have sought to challenge the findings made by this Hon'ble Tribunal in Judgment dated 04.05.2018. Lengthy and argumentative deliberations have been made by the Petitioners to set out their challenge to the factual findings made in the Judgment. While putting forth such arguments, the Petitioners have only repeated their arguments led before the Tribunal at the time of passing of Judgment dated 04.05.2018. Despite such prolix deliberations, the Petitioners have failed to point out either any 'mistake' or apparent nature of 'mistake' in the Judgment dated 04.05.2018, as required under Section 420(2) of the Companies Act, 2013.
2. Further, one of the malicious grounds for review taken by the Petitioner is that Hon'ble Tribunal has neither set aside nor declared the filing of DIR- 11 null and void and in the absence of such declaration respondent No. 1& 2 cannot be restored to the position of whole-time directors. The Petitioner has failed to accept the

detailed reasoning of the Hon'ble Tribunal with respect to DIR 11, in the said judgment it had categorically elaborated the fate of all the actions which was taken pursuant to 09.03.2016 and therefore the status of form DIR-II is evidently null and void under the implications of the said Judgment. In spite of such clear prescription of the said the Judgment in paragraph 90, 91, 93 and 94, the act of reviewing the said judgment on this aspect is clearly in the teeth of the said judgment. In view of such clear prescription, petitioner was bound to take consequential action for appointment/restoration of Director, he was under obligation to file DIR -12 before ROC for appointment of Respondent 1& 2 as whole time director of Petitioner No. 1 Company, however Petitioners are repeatedly and unrepentantly indulging in reprehensible and unscrupulous conduct by resorting to misusing the mercies of law by falsely filing the review Petition.

3. The exercise of Petitioners in seeking review of Judgment dated 04.05.2018 on grounds amenable only to appellate jurisdiction, lies in conflict with the settled Judicial Prescriptions as in ***Lily Thomas & Ors. vs Union of India & Ors. (2000) 6 Supreme Court Cases 224*** wherein the scope of review was observed by the Supreme Court in Para 56.
4. The present Review Petition, therefore, is not maintainable, being lying in the teeth of the above Judicial Prescriptions, and thus liable to be rejected.
- E. This, Hon'ble Tribunal, may therefore, be pleased to reject the captioned Review Petition with costs in favour of Respondents

ORDER

16. On perusal of the impugned order dated 04.05.2018 passed by this Tribunal as modified by the order dated 21.05.2018 in Company Petition No. 14/2017 and the submissions and arguments made by both the sides. We are of the considered view that the said order

was decided on merits and both the sides were given equal and ample opportunities to present their cases. Both the Parties were heard extensively and only after which the order was passed.

17. This application has been filed for review/recalling of the said order under the provisions of Section 420(2) of the Companies Act, 2013, which is given as under, for ready reference:

"The Tribunal may, at any time, within two years from the date of the order, to rectify 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."

18. On perusal of the above statutory provision, it is clear that if any mistake is apparent from the record, the Tribunal may amend the order passed by it and shall make such amendment. If it appears to the Tribunal that there is an error apparent from the record, then judgement/mistake can be rectified by the Bench under this provision.

19. However, CP No. 14/2017 has been allowed by this Bench on merits, and there is no error on the face of the record. If the Respondents in the CP. No. 14/2017 was not satisfied with the impugned order, the remedy was available for them.

20. We have gone through the Petition and Rejoinder filed by the Review Petitioners but no new material has been brought into/submitted by the Review Petitioners to review the judgement as prayed for.

21. **Heard both the sides at length. We do not find any substance in the review petition filed by the Respondent of CP No. 14/2017.**

22. **Hence, the Review Petition No. 01/2018 is hereby rejected as to no costs.**

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)
//R.M//

Sd/-

(H. V. Subba Rao)
Member (Judicial)

