

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 420 of 2023**

**&**

**I.A. No. 1388 of 2023**

**IN THE MATTER OF:**

**Ishrat Ali**

**...Appellant**

**Versus**

**The Cosmos Cooperative Bank Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Dhruv Surana, Mr. Rajeev Ahuja, Mr. Arya Hardik, Advocates

**For Respondent:** Mr. Ninad Laud, Mr. Ivo' D'costa, Mr. Avinash Mathews, Advocates

**ORDER**

**19.05.2023:** Heard Learned Counsel for the Appellant as well as Learned Counsel for the Bank.

2. This Appeal has been filed against the Order dated 09.12.2022 by which Order the transfer application filed by the Appellant before the Principal Bench has been rejected. The Transfer Application was filed by the Appellant for transferring of CP(IB) No. 4108(MB)2018 pending before the NCLT, Mumbai, Court III. The Principal Bench has noted grievance raised by the Appellant in the Transfer Application which has been noted in the Order that Applicant sought for the recusal of the Member who did not recuse from the proceeding hence the Transfer Application was filed. The Principal Bench has taken the view that the said ground cannot be a ground for transferring a proceeding from NCLT Mumbai.

3. Learned Counsel for the Appellant challenging the Order contends that several new facts came to the notice of the Appellant like defect in Affidavit which was shown in support of Section 7 Application and he has received certain information by RTI on 09<sup>th</sup> June, 2022 which indicates that the fraud was practised by the Registry. It is submitted that these were sufficient grounds for allowing the transfer application.

4. We have considered the submissions of the Learned Counsel for the Appellant.

5. Rule 62 of NCLT Rules, 2016 which deals with the recusal provides as follows:

*“62. Recusal.-*

*(1) For the purpose of maintaining the high standards and integrity of the Tribunal, the President or a Member of the Tribunal shall recuse himself: –*

*(a) in any cases involving persons with whom the President or the Member has or had a personal, familial or professional relationship;*

*(b) in any cases concerning which the President or the Member has previously been called upon in another capacity, including as advisor, representative, expert or witness; or*

*(c) if there exists other circumstances such as to make the President or the Member’s participation seem inappropriate.*

*(2) The President or any Member recusing himself may record reasons for recusal:*

*Provided that no party to the proceedings or any other person shall have a right to know the reasons for recusal by the President or the Member in the case.”*

6. The provision of Recusal as provided in the rules is a provision which can be utilised by Members and President to recuse themselves from hearing a proceeding if conditions or factors as mentioned in sub-clauses (a), (b) and (c) are fulfilled. The litigant has no right to ask the member to recuse himself. The present is a case where request was made by the Appellant to the Member to recuse from hearing the proceeding. Rule 62 cannot be put to such interpretation and giving any such right to litigant shall lead to disastrous and unwelcome results.

7. The submission raised by the Appellant that certain document which has been found by the Appellant subsequently indicates that there was fraud in filing Section 7 Application are the questions which have no bearing on the present case since admission order of Section 7 Application was affirmed by this Tribunal as well as by the Hon'ble Supreme Court of India. The Application filed by the Appellant to recall the said order has also been dismissed by this Tribunal on 06.02.2023 in I.A. No. 4632 of 2022 in C.A.(AT) Ins. No. 373 of 2022 by imposing a cost of Rs. 1 Lakh. Present is a case where Transfer Application filed by the Appellant was rejected by the Principal Bench of NCLT, we see no error in the order by which transfer application has been rejected. The admission order of Section 7 which has attained finality upto the

Hon'ble Supreme Court cannot be allowed to be stified on the argument that affidavit which was filed in support of application was not properly sworn and some information under RTI has been received on 09<sup>th</sup> June, 2022.

We thus do not find any merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Naresh Salecha]**  
**Member (Technical)**

*Basant/nn*