

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI  
(Appellate Jurisdiction)**

**Company Appeal (AT) (CH) No. 02 / 2021**

**(Under Section 421 of the Companies Act, 2013 read with Rule 22 of**

**National Company Law Tribunal Rules, 2016)**

**(Arising out of Order dated 19.01.2021 passed by National Company Law Tribunal,**

**Bengaluru Bench in in company Petition No.06/BB/2021 )**

**IN THE MATTER OF :**

**Devas Employees Mauritius Private Limited ..Appellant  
(in its capacity as a share holder of  
Devas Multimedia Private Limited)  
A Company incorporated under the laws of the  
Republic of Mauritius, bearing Company No.C087664,  
Having its registered office at :**

**C/o International Proximity, 5<sup>th</sup> Floor  
Ebene Esplanade, 24, Cybercity,  
Ebene 72201  
Republic of Mauritius**

**Represented by its Director,  
Mr.Arun Kumar Gupta.**

**V**

**Respondent No.1 ..Respondents**

**Antrix Corporation Limited  
A government company within the meaning of  
the Companies Act, 2013, Having its registered  
office at : Antariksh Bhavan Campus,  
Near New BEL Road, Bengaluru 560 094.**

**Represented by its Chairman and Managing Director**

**Respondent No.2**

**Ministry of Corporate Affairs  
5<sup>th</sup> Floor, 'A' Wing,  
Shastri Bhawan  
New Delhi 110 001  
Represented by it Secretary.**

**Respondent No.3 :**

**Devas Multimedia Private Limited (in prov.liqn.)  
A company within the meaning of  
Companies Act, 2013, Having its registered office at  
First Floor, 29/1, Millers Tank Bund road,  
Bengaluru 560 052.**

**Represented by the Provisional Liquidator,  
Attached to High Court of Karnataka,  
No.26-27, 12<sup>th</sup> Floor, Raheja Towers, West Wing,  
MG Road, Bengaluru 560 001.**

**Present:**

**For Appellant: Mr.P.S.Raman, Sr.Advocate along with  
Mr.Bharadwajaramasubramanian, Advcoate**

**Respondent No.1 Mr. Tushar Mehta,  
Solicitor General of India**

**Respondent  
No.2 : Mr. N.Venkataraman,  
Additional Solicitor General of India along with  
Mr.Chandrasekhar Bharti & Mr.Rohan K.George  
: Mr.Manmohan Juneja  
Director General of Corporate Affairs**

**Mr.Sanjay Shouri  
Director ,Legal & Prosecution**

**Respondent  
No.3 Mr.V.Jayakumar, Official Liquidator and  
Mr.Varun BS, Deputy Official Liquidator**

**ORDER**

**VENUGOPAL M.J**

**Introductory:**

The Appellant has preferred the present Appeal being aggrieved against the order dated 19.1.2021 passed by the National Company Law Tribunal, Bengaluru Bench in company Petition No.06/BB/2021.

2. The National Company Law Tribunal while passing the impugned order dated 19.1.2021, inter-alia at Para 11 to 13 had observed the following:

*"Para 11: Since the R1 Company has suffered various adverse findings with cogent evidence at the hands of various Statutory Authorities, as detailed supra, it would not be proper to permit R1 Company to continue its name on the rolls of Registrar of Companies, Bangalore. Therefore, in terms of provisions of Section 283 of Companies Act, 2013, it would be just to permit Provisional Liquidator to forthwith take into his or its custody or control all the property, effects and actionable claims to which the R1 Company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the R1 Company and to avoid misuse of its property.*

*Para 12 : So far as the contentions of the Learned Counsel for the R1 Company, as detailed supra, are concerned, it is settled position of law that principles of natural justice mandates judicial*

*forums to afford reasonable opportunity to other side before passing any order by judicial Authorities. However, Courts/Tribunals are empowered to pass appropriate Ad Interim/interim order at the stage of admission itself, it circumstances, in a case justifies for passing such interim order(s). In the instant case, it is not in dispute that R1 Company was given notice though it was short for duration and thus their Counsels appears before the Tribunal and advanced their arguments on merits of the case. So far as the allegation that the Petition is not filed in accordance prescribed rules in concerned, it is to be mentioned here that mis-quoting wrong rule may not fatal to the case and the Tribunal under its inherent powers can condone those mistakes and it can also permit the Parties to rectify it. So far as the other contention that there is no necessity to appoint a Provisional Liquidator and the R1 Company is ready to furnish the required information and several of*

*properties of the Company are already attached by Statutory Authorities is concerned, it is relevant to mention here that the instant petition is filed for ultimate Winding Up of R1 Company, and not mere taking possession of affairs of the Company by Provisional Liquidator.*

*Para 13. For the aforesaid reasons and circumstance of the case, and the law on the issue, we are of the considered opinion that prima facie case is made out by the Petitioner in favour of granting interim order as prayed for. It is just and proper to appoint Provisional Liquidator to take control of the affairs of R1 Company pending final adjudication of main petition for winding up.”*

and resultantly by exercising the powers conferred on the Tribunal, especially under Section 273 and other extant provisions of Companies Act, 2013 under Chapter- XX, Part-1, pending finalisation of winding up petition had admitted the Company Petition and granted time to the Respondents therein to file their 'Replies' and appointed the 'Official Liquidator' Bangalore attached to the Hon'ble High Court of Karnataka at Bangalore, as 'Provisional Liquidator' for the first Respondent Company, etc.

### **GLIMPSE OF SOME FACTS**

3. According to the Appellant, 'Devas' was engaged inter-alia, in the business of delivering broadband wireless access and audio-visual services through an integrated hybrid satellite and terrestrial communications system and in connection with its business activities, it entered into an agreement dated 28.1.2005 ('Devas Agreement') with Antrix Corporation Limited ("Antrix"/"Respondent No.1" which is the marketing arm of the Government of India's Indian Space Research Organization ("ISRO") set up under the DOS.

4. The Learned Counsel for the Appellant points out that Deutsche Telekom Asia Pte. Ltd is a wholly-owned subsidiary of Deutsche Telekom AG, which is the world's fourth largest telecommunications, media, and information technology service companies in the world and that the Government of Germany is substantial shareholder of Deutsche Telekom AG and owned approximately 32% of Deutsche Telekom in Devas at the relevant time.

5. The Learned Counsel for the Appellant brings to the notice of this Tribunal that the investment by Deutsche Telekom in Devas was made pursuant to the approval granted by the Foreign Investment Promotion Board ('FIPB') on 18.5.2006 and was recognised as one of the largest Foreign Direct Investment into Karnataka during the period January 2000 to December 2010.

6. The plea of the Appellant is that on 25.2.2011, 'Antrix' purported to terminate the 'Devas Agreement' and to thereby cause irreparable loss to Devas leading to 'Devas' having no option but to invoke 'pre-arbitration' steps and then arbitration in accordance with arbitration agreement mentioned in the 'Devas Agreement' and in fact, 'Devas' had commenced arbitration to pursue its legal remedies.

7. The stand of the Appellant is that 'Devas' invoked 'Arbitration' on 29.6.2011 by filing a request for 'Arbitration' (RFA) before the International Court of 'Arbitration' of the International Chamber of Commerce (ICC) which was proceeded by the pre-arbitral steps commenced from 28.2.2011.

8. Furthermore, the invocation of 'Arbitration', 'Devas' commenced to pursue its legal remedies that led to series of actions on behalf of the 'Government of India' to brow beat and harass its Directors & others, for no rhyme or reason to utilise the State's of machinery with a view to gain an unfair advantage.

9. Consequent to the Devas letter dated 18.4.2011, it was clear that it would pursue its remedies by way of 'Arbitration' and 'Devas' had refused 'cancelled' and returned' as legally unmerited a cheque for INR 583,734,000 provided as a purported refund by 'Antrix' of the Upfront capacity Reservation Fees paid under the 'Devas Agreement etc..

**Appellant's submissions :**

10. The Learned Counsel for the Appellant contends that the Appellant/Company, incorporated under the Laws of Republic of Mauritius on 16.4.2009 and is the 'Shareholder' of the third Respondent (Devas Multi Media Pte.Ltd.) presently holding 3.48% of the issued Equity Share Capital and that the Appellant had subscribed Equity Shares of the third Respondent between 2009 and 2010, after securing requisite approvals from the Foreign Investment Promotion Board (FIRP). In fact, in its capacity as 'Shareholder', the Appellant had participated in the Affairs, Management of the third Respondent from the year 2009.

11. The Learned Counsel for the Appellant submits that the Appellant's Director Mr.Arun Kumar Gupta had endorsed and verified the Appeal in accordance with the National Company Law Appellate Tribunal Rules, 2016 and that the 'Letter of Authority' dated 26.1.2021 authorising the Appellant's aforesaid Director to present the Appeal, sign the Affidavits etc., was annexed to 'Vakalathnama' (vide Pg-2897/2989 Vol.XV.Appeal)

12. At this juncture, the Learned Counsel for the Appellant brings to the notice of the Tribunal that the Appellant's Director, Mr.Arun Kumar Gupta, is residing in Mc Lean, Virginia, USA and accordingly executed the 'Appeal Memo', verifying Affidavit', 'Affidavits' in



support of Application for Stay (IA 5/2021, Pg.2824 Vol.XV Appeal), application for Exemption (IA 4/2021-Pg 2877-Vol.XV of the Appeal Paper Book) and in fact all the Affidavits were sworn to before a 'Notary Public' in Virginia, USA, in accordance with the Law of 'USA' and the 'Apostles Convention'. In this regard, the Learned Counsel for the Appellant points out that all such Notarised Affidavits etc. were sent for 'Apostillation' and the same will be filed before this Tribunal soon after the receipt, eight weeks from 28.1.2001, sought in IA 4/2021, due to COVID-19 restrictions in USA.

13. The Learned Counsel for the Appellant adverting to Section 421(1) of the Companies Act, 2013, points out that the words 'any person aggrieved' by an order of the Tribunal may prefer an 'Appeal' before the 'Appellate Tribunal'. Added further, the Learned Counsel for the Appellant expatiating his contention proceeds to point out that Section 421(1) of the Companies Act, 2013, does not contain any threshold conditions, bar, or limitation on who such an 'Aggrieved Person' can be.

14. The other contention advanced on behalf of the Appellant is that the impugned order dated 19.1.2021, passed by the National Company Law Tribunal, Bengaluru Bench' in C.P.No.06/BB/2021 has culminated in the appointment of a 'Provisional Liquidator', who had taken over the affairs of the Management of the third Respondent,

the 'Board of Directors' and 'Share Holders' of the third Respondent are the persons who are aggrieved by the said order.

15. The Learned Counsel for the Appellant projects an argument that the 'Appellant' is one of the 'Shareholders' of the third Respondent', being its constituent Board Member and owner and hence it has a say in the manner in which the Company, its Affairs, management, etc. are carried out. Also, it is represented on behalf of the Appellant, that any action that affects the third Respondent, especially when the same results in super session of its Board and taking over of all its 'Management' and 'Affairs' would in turn result in denial curtailment, taking away or prejudicially affecting the 'Appellant's' personal and proprietary rights associated with its share holdings. In effect, the crystalline plea of the Appellant is that it cannot be said that a 'Shareholder' of Devas cannot be an 'Aggrieved person' in terms of the ingredients of Section 421(1) of the Companies Act, 2013.

16. The Learned Counsel for the Appellant by referring to the second proviso to Section 273 points out that the two requirements prior to the Appointment of 'Provisional Liquidator' viz.

(i) Notice for Appointment for 'Provisional Liquidator' prescribed under Form WIN-7 under 2020 Rules.

(ii) Reasonable opportunity to make its representations (Section 273 read with Rule 14, 2020 Rules) and indeed both these requirements are to be met before the order of Appointing of 'Provisional Liquidator' was passed on 19.1.2021.

17. The Learned Counsel for the Appellant contends that the first Respondent had not filed any separate Application for Appointing 'Provisional Liquidator' and their reliefs were just mentioned in the Petition filed before the 'Tribunal'.

18. Besides the above, the Learned Counsel for the Appellant points out that Rule 14 of the Companies Winding up Rules, 2020 requires that the Application for Appointing of 'Provisional Liquidator' in Form WIN-7' must be supported by a separate Affidavit containing reasons for appointing a 'Provisional Liquidator' and that neither the Petition filed before the National Company Law Tribunal contends such reasons or ground nor as the impugned order adverted to such reasons or grounds. A clear cut position of the Appellant is that the 'Company Petition' filed before the National Company Law Tribunal, Bengaluru bench is non-est in Law as such the same cannot be acted upon the 'Tribunal'.

19. The Learned Counsel for the Appellant takes a primordial stand that the C.P.No.06/BB/2021 was served on 'Devas' at 4.30 p.m. on 18.1.2021 and that the matter was listed before the 'Tribunal' for

hearing on 19.1.2021 at 10.30 a.m. and immediately order appointing 'Provisional Liquidator' was passed without complying with the Companies Act, 2013 and 'Companies Winding up Rules, 2020, or permitting 'Devas' to file its 'Reply' to the petition or prayer for the Appointment of 'Provisional Liquidator'.

20. The Learned Counsel for the Appellant by referring to Paragraph 5 of the impugned order dated 19.01.2021 passed by the Tribunal contends that the only submissions made by 'Devas' were to grant 'a reasonable opportunity' and that a National Company Law Tribunal Petition) was non-compliant with the 'Act' and 'Rules'. Therefore it is the stand of the Appellant that failure to adhere to the procedural and substantive safeguards mentioned under the Companies Act, 2013 and 2020 Rules had resulted in denial of the rights of 'Natural Justice ', (i.e.'Adequate Notice' and 'Fair Hearing') and the drastic outcome of appointing a 'Provisional Liquidator'.

21. The Learned Counsel for the Appellant submits that upon exchange of Letters dated 1.6.2011 and 14.11.2011 between Secretary, DOS (none other than MD of the first Respondent and the second Respondent) (Annx A-6 at Pg.2195- 2196 Vol.XII Appeal Paper Book), Annx-8 at Page 2199, 2200 Vol.XII Appeal Book, Show cause Notice for investigation into Devas were issued and

“Investigation Report’ was drawn up under Section 209A,235(read with 234(6), 241, 242, Companies Act, 1956 on 11.8.2011, 25.11.2011, 29.11.2011, 30.11.2011, 1.12.2011 (Annx A-7 at Pg.2197, A-9 at P.2201-2215, Vol.XII, Appeal P.Book) and lastly, based on the ‘Investigation Report’, a notice for cancellation of Devas’ Certificate of Incorporation, under the Companies Act, 1956 was issued on 7.5.2012.

22. The Learned Counsel for the Appellant forcefully submits that the Show Cause Notice, ‘Investigation Reports’, etc were assailed before the Hon’ble High Court of Delhi in WP (c ) 8554/2011 by ‘Devas’ and ‘Interim Order’ was passed on 7.12.2011 to the effect that ‘no coercive steps’ and further that the orders of ‘Show Cause Notice’ were directed to be kept in abeyance, by means of an order dated 29.5.2012.

23. The Learned Counsel for the Appellant emphatically comes out with a version that the allegations mentioned in the Notice, ‘Investigation Reports’ etc., are subjudice before the Hon’ble High Court of Delhi and they are the very same allegations that they are made before the National Company Law Tribunal (alleged share premiums, existence of technology, FDI, FIPB approvals, Foreign Investors inward & outward remittances etc. Therefore, a plea is taken on behalf of the Appellant that Respondents No.1 and 2 could

not have authorised the filing of the 'Company Petition' before the 'Tribunal' in the teeth of allegations which are unproved or tested in a 'Court of Law' during the pendency of WP (C ) No.8554/2011 .

24. The Learned Counsel for the Appellant contends that none of the allegations are 'Fraud', 'Alleged Illegality' etc. are proven to be true under the 'Prevention of Money Laundering Act and Foreign Exchange Management Act, and or the Central Bureau of Investigation' proceedings.

**APELLANT'S CITATIONS:**

25. The Learned Counsel for the Appellant refer to the decisions for the proposition that appointment of 'Provisional Liquidator' is the drastic step and should not be resorted to when assigning 'special reasons'.

- 1) In re London, Hamburg and Continental Exchange Bank,(1866)LR Eq 231 1866, Page 236
- 2) In Re.Gaya Sugar Mills Ltd. Lakshminarayan Bhandani and Ors. 1949 SCC Online Pat 32
- 3) Virendrasingh Bhandari and Ors. V. Nandlal Bhandari and Sons P.Ltd. (1974) 1 Comp LJ 245 (MP)
- 4) Kailash Prasad Mishra and Ors v. Medwin Laboratory P Ltd. 1985 SCC Online MP 194
- 5) The Learned Counsel for the Appellant relies on the decision of the Hon'ble High Court of Judicature, Hyderabad (For the

State of Telengana and the State of Hyderabad) in the case of Avon Lifesciences Limited V. Ashika Credit Capital Ltd. reported in MANU/AP/0303/2018, wherein it is observed that to contend 'the 'Hon'ble Tribunal ought to have given the 'Appellant' a 'reasonable opportunity' of making a representation.

(1) Also, the Learned Counsel for the Appellant proceeds to place reliance on the decision Vivek Continental Pvt.Ltd. v. O.P.Gupta 2020(2) MPLJ 337 to put forward a plea that in the absence of 'reasons' to dispense with the Appellant's representation, the 'Impugned Order' ought to be set aside.

(7) The Learned Counsel for the Appellant in regard to the submissions that a 'reasonable opportunity' to be construed as a reasonable opportunity to defend and controvert the case of Antrix Corporation Ltd., especially in light of suppression of material facts and documents, reference to the following decisions of the Hon'ble Supreme Court :

- a) Khem Chand v. Union of India 1958 SCR 1080 : AIR 1958 SC 300
- b) Transmission Corpn. Of A.P.Ltd. and Ors v. Sri Rama Krishna Rice Mill (2006)3 SCC 74
- c) Oryx Fisheries Private Limited v. Union of India and Ors.(2010) 13 SCC 427Pg.427.

26. The Learned Counsel for the Appellant adverts to the proposition that when a law requires to be done in a certain way, it ought to be done in that manner and 'no other' and in this regard, seeks in aid the following decisions:

a. State of Uttar Pradesh and Ors.

V. Babu Ram Upadhyay AIR 1961 SC 751

b. Ramachandra Keshav Adke (Dead) by Lrs. And Ors.

V.Govind Joti Chavare and Ors.  
(1973) 1 SCC 559

c. Chandra Kishore Jha v.

16Mahavir Prasad and Ors.(1999) 8 SCC 266

d. Meera Sahni v Lietenant Governor of Delhi

and Ors. (2008) 9 SCC 177

e. Nazir Ahmed v. King Emperor AIR 1936 PC 253

27. The Learned Counsel for the Appellant as regards the plea that prima facie 'Fraud' cannot be established or taken to be proved on the basis of a charge sheet or pleadings, refers to the following decisions:

(I) A.L.Narayanan Chettyar and anr. V.Official Assignee of the High Court, Rangoon and Anr. AIR 1941 PC 93

(II) Satyanarana Musadi and Ors. V.State of Bihar (1980)  
3SCC 152

(III) Svenska Handelsbanken v M/s Indian Charge Chrome and Ors. (1994) 1 SCC 502



28. The Learned Counsel for the Petitioner points out that the 'Company Petition' is 'malafide' and was filed with a ulterior motive and hence should not have been admitted and to lend credence to the said contention, refers to the following decisions :

(a) National Conducts (P) Ltd. V S.S. Arora (1968) 1 SCR

430:

AIR 1968 SC 279

(b) East Indian Wires Limited v. Mohan Lal Ghosh

2003 SCC Cases Online Cal -164.

29. In regard to the contention that 'what cannot be done' directly, cannot be done 'indirectly' vis a vis the Ministry of Corporate Affairs, investigation under Companies Act, 1956, and the National Company Law Tribunal Petition under the Companies Act, 2013, the Learned Counsel for the Appellant relies on the decision of Hon'ble Supreme Court Jagir Singh V. Ranbir Singh and Anr. reported in 1979 1 SCC 560.

30. The Learned Counsel for the Appellant submits that since an 'Inquiry' for 'Fraud' was initiated under the Companies Act, 1956, the provision of the Companies Act, 2013, relating to 'Fraud' could not have been applied retrospectively and refers to the order of the Hon'ble High Court of Delhi in Alchemist Infra Reality Ltd.. v. Union of India and Ors. LPA No.189/2019 and Cm Appl.12577/2019 dated 18.3.2019.

### **The First Respondent's submissions:**

31. The Learned Counsel for the First Respondent submits that the First Respondent/Petitioner before the 'Tribunal' had served a notice both on the company petition and the application for the appointment of a 'Provisional Liquidator', 'Devas' Multimedia Private Limited' and Learned Senior Counsels and Learned Counsels representing the company appeared before the 'Tribunal' on 19.01.2021. It is the plea of the First Respondent that, Learned Senior Counsels and Learned Counsels had not only appeared on behalf of 'Devas' and also made submissions which were taken on record by the 'Tribunal'.

32. The Learned Counsel for the First Respondent takes a stand that the 'Tribunal' and the company even can dispense with a 'reasonable opportunity of hearing' and pass orders for 'special reasons' which unerringly points out that there is no absolute statutory mandate to comply with the 'Principles of Natural Justice' and furthermore, in the present case, after duly receiving the notice, 'Devas' was adequately represented before the 'Tribunal' and hence the 'Plea of violation natural justice' does not arise.

33. The Learned Counsel for the First Respondent contends that the 'Courts'/ 'Tribunals' are empowered to pass appropriate 'Ad-Interim Orders' at the stage of 'Admission', in a given case, which justifies

passing of such 'Interim Orders'. The Learned Counsel for the First Respondent takes a plea that the 'Tribunal' found fit to appoint a 'Provisional Liquidator', as it was convinced 'Prima-Facie' that the case involves 'Fraud', which needs such an appointment and the same cannot be permitted to be perpetuated.

34. The Learned Counsel for the First Respondent bring to the notice of this 'Tribunal' that the 'Provisional Liquidator' had filed its First Report on 03.02.2020, bringing on record about the fact that 'Devas' as the company exists only on paper and it is a 'Sham Entity' involved in acts of 'Fraud' which were mentioned. In fact, 'Devas' wanted three to four days time to file 'Response' against the acts of 'Fraud' which would absolve themselves completely and now that 'Provisional Liquidator' was appointed, and 'Directors', the company could have come on record as 'Former Management' and filed the same, denying the case of 'Fraud', in as much as, the 'Tribunal' had listed the case on 08.02.2021 for further hearing. Besides this, the 'Former Management' could have very well filed its objections, contested and denied the case of 'Fraud'. However, such a recourse was not adopted in the instant case on hand.

35. The Learned Counsel for the First Respondent contends that the Appellant could not cite a single justifiable reason to support, the averments made in Paragraph 7.1 (Page 32 of the Appeal Memorandum) and Paragraph 7.5 (Page 33-34 of the Appeal memorandum) read with the 'List of Dates and Events'(Serial No 1-6 at Pages 7-9 of the Appeal Memorandum) wherein it was pleaded that,

*"Devas was engaged in the business of delivering broadband, wireless access and audio-visual services through an integrated hybrid satellite and terrestrial communication system and from inception resources and funds had been raised from its shareholders in developing technology and carrying out various acts in furtherance of its obligation under the 'Devas' Agreement".*

36. The Learned Counsel for the First Respondent points out that it is a well settled position of law that any false statement in a 'Sworn Memorandum of Appeal' will be an adequate ground to reject the Appeal in limine and in this connection reliance of the decision of Hon'ble Supreme Court in *Sciemed Overseas Inc v. BOC India Ltd & others* reported in 2016(3) SCC page 70 (Vide Paragraph No 28 & 29).

37. The Learned Counsel for the First Respondent projects an argument that 'Fraud' vitiates everything and such a Litigant is not entitled to any relief whatsoever and in this connection relied upon the following decisions.

i) Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh reported in 2019 (14) SCC 449 at Paragraph 68.

ii) Bhauruo Dagdu Paralkar v. State of Maharashtra reported in 2005 (7) SCC 605 at Paragraph 9-12 & 16.

iii) M/s. Shrisht Dhawan v. Shaw Brothers reported in 1992 (1) SCC 535 at Paragraph 20.

38. The Learned Counsel for the First Respondent contends that commencement of a proceeding by an 'Authority' for a particular action neither militates, restricts or prohibits the 'Authority' in initiating any other action under the same Law, if found appropriate and fit.

39. The Learned Counsel for the First Respondent submits that in the year 2011, based on the inquiries held then, the Registrar of 'Companies' Bangalore issued a few show cause notices for violation of certain provisions of the Companies Act, which proceedings for strange reasons were pursued by 'Devas Multimedia', a registered company Bangalore, before the Hon'ble Delhi High Court.

40. The Learned Counsel for the Appellant contends that the 'Tribunal's Order' dated 19.01.2021 had not directed any prosecution against any person and hence there was no violation of the Order of Hon'ble High Court.

41. The Learned Counsel for the First Respondent refers to Section 7(7) of the Companies Act, 2013 which provides for the removal of the name of the company from the Registrar of the companies, where a company was incorporated by furnishing any faults or incorrect information or representation or by suppressing any material fact or information in any of the documents or declarations filed or made for incorporating such fact or by fraudulent action. Furthermore, the Respondent had not sought any relief before the Tribunal for striking off a name of the company and instead, it filed a petition under section 271(c) of the Companies Act defining one of the circumstances in which a company may be wound up. In fact Section 271(c) of the Companies Act, 2013 allows the 'Tribunal' to wind up a company if it finds that the 'affairs' of the company were conducted in a fraudulent manner, or the company was formed for fraudulent and unlawful purpose.

42. While summing up, the Learned Counsel for the First Respondent points out that the 'Tribunal' under Section 271 (c) of the Companies Act, 2013 after satisfying the conditions of Section 272 had proceeded to appoint a 'Provisional Liquidator', of course, after hearing both parties, in terms of Section 273 (1) (c) of the Companies Act, 2013.

**First Respondent's Decisions:**

43. The Learned Counsel for the First Respondent cites the decision of Hon'ble Supreme Court in Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh reported in (2019) 14 SCC at Page 449, wherein it is observed that no right can be claimed by a 'Fraudster' on the ground of technicalities.

44. The Learned Counsel for the First Respondent relies on the decision of Hon'ble Supreme Court in Bhaurao Dagdu Paralkar v. State of Maharashtra reported in (2005) 7 SCC at Page 605, wherein it is observed that 'Fraud' is an act of deliberate deception with design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. 'It is a cheating intended to get an advantage'.

45. The Learned Counsel for the First Respondent refers to the decision of Hon'ble Supreme Court in Shrist Dhawan (SMT) v. M/s. Shaw Brothers reported in (1992) 1 SCC at Page 534,

wherein it is observed that 'Burden to prove fraud or collusion is on the person who alleges it.

46. The Learned Counsel for the First Respondent points out the decision of Hon'ble Supreme Court in *Sciemed Overseas Inc v. BOC India Limited & others* reported in (2016) 3 SCC at Page 70, wherein it is observed that 'Sanctity of affidavits filed by parties has to be preserved and protected and at the same time filing of irresponsible statements without any regard to accuracy has to be discouraged. Furthermore, it is held that 'Filing of false affidavit should be effectively curbed with a strong hand to preserve purity of judicial proceedings'.

Second Respondent's pleas:

47. The Learned Director, Legal & Prosecution appearing for the second Registrar contends that in terms of the Companies Act, 2013, the Board of Directors are the agents of the Company and they have fiduciary relationship with the 'shareholders' . In fact, no person is to be permitted in representing the Company in the absence of a 'Authorisation' from the 'Board of Directors' and hence the 'Appeal' is to be dismissed at the very initial stage.

48. According to the second Respondent 'Apostil Certificate' attached with the Affidavit along with 'Appeal' and further that the Application for waiver of 'Apostil and in the absence of the



Resolution by the 'Board of Directors' itself is not maintainable and therefore, the instant Appeal is liable to be dismissed on this score.

49. It is represented on behalf of the second Respondent that 'shareholder' is different from Company and that 'shareholder' cannot be 'Aggrieved Person' and that the Companies Act, 2013 does not envision any role of a 'shareholder' in the management of Company, as the same is rested with the 'Board of Directors', who are having judiciary relationship and happens to be 'Trustees' as well as 'Agent' of the Company.

50. It is the version of the second Respondent 'Provisional Liquidator' is purporting its statutory duties while issuing directions of the Legal Counsels to no longer represent 'DMPL' and requesting the 'Former Directors' to depose and in fact in the First report of the 'Provisional Liquidator' it was not mentioned that the registered office was empty, neither any employee nor any documents/record was found there and that the said registered office was given to one Nandish Patel, Advocate, to conduct his legal affairs. Moreover, one Mr.R.Mohan, erstwhile employee of 'DMPL' also designated as a Director, (Finance & HR), (a misleading designation) had stated that one Mr.Rajiv Mahajan V.P.(Finance) based in USA was giving approval for expenses and withdrawals who

accessed data on 'Accounts and Finance' online through 'cloud', gave approvals to the said Mr.Mohan.

51. The Learned Director (Legal & Prosecution) for the second Respondent contends that the Former Director(s) in spite of numerous opportunities provided to them, had failed to appear before the 'Provisional Liquidator' even through 'video conference' and some of the Director(s) had sent a similar 'Reply' stating that 'Auditors' are best positioned to provide the information requisite and as a matter of fact, the 'Auditor' of the Company cannot step into the shoes of the 'Director'.

52. On behalf of the second Respondent, it is submitted that the Former Management had fraudulently conducted the affairs of the Company from the beginning and had the technology or 'IPR' to develop such technology which they claimed.

53. Apart from this, the 'French Authorities' issued a 'Letter Rogatory' which clearly established that 'DMPL' misrepresented in 2005 which they claimed to have the ownership of IPR to use the technology which was not unknown to the world. It is the stand of the second Respondent that the present Appeal is to be dismissed on maintainability' on the Locus standi of the 'Appellant' and fraudulent intend of the Company since the

inception which may be unearthed by the 'Provisional Liquidator'.

54. In regard to the plea of the 'maintainability ' in case of 'fraud' on behalf of the second Respondent, the following orders are referred to :

- a. Union of India, Ministry of Corporate Affairs V. Infrastructure Leasing & Financial Services Ltd. (C.P.No.3638.2018) even on alternative remedy under section 241 of the Act on the first day management was suspended. C.P.No.191/97 order dated 22.05.1997) passed by Hon'ble Judge Dr.M.K.Sharma of High Court of Delhi in the matter of RBI v/s CRB Capital
- b. Majestic Infracon Private Limited V Etisalat Mauritius Limited (2014 SCC Online BOM 460) para 176 of the order where power of the Court to pass interim order is dealt.
- c. Interim Order dated 01.10.2018 in CP No.3638/2018 passed by the NCLT Mumbai (Special Bench) in the matter of Union of India – Vs –Infrastructure Leasing & Financial Services Limited, as mentioned .

## **Evaluation :**

55. At the outset, this 'Tribunal' points out that the First Respondent/Petitioner in Company Petition No.06/BB/2021 on the file of the National Company Law Tribunal, Bengaluru Bench, had sought the main relief against the Third Respondent/First Respondent (Devas Multi Media Pvt.Ltd.) that the Company to be wound up in terms of the provisions of Section 271(C ) of the Companies Act, 2013, on the ground that the affairs of the said Company were conducted in a fraudulent manner and the said Company was formed for fraudulent and unlawful purposes etc. Also, that the First Respondent/Petitioner had prayed for 'exparte ad-interim relief' against 'Devas Multi Media Pvt.Ltd.' that the 'Board of Directors' of the First Respondent which suspended with immediate effect and that the 'Official Liquidator' Bengaluru attached to the said Court of Bengaluru, appointed as a 'Provisional Liquidator' for the said Company, who shall function as per the provisions of the Companies Act, 2013. Further, a relief was sought by the First Respondent/Petitioner before the 'Tribunal' that an interim 'Provisional Liquidator' appointed, be tasked with the Management of Affairs of the Company, 'Devas Multi Media

Pvt.Ltd.(Respondent No.3) in Appeal and shall report to the 'Tribunal' Directly.

56. Before the 'Tribunal, the third Respondent/'Devas Multi Media Pvt.ltd./First Respondent was represented through Learned Counsels and as seen from the impugned order, they accepted the notice for the third Respondent/First Respondent and prayed for some time to file short reply. In regard to the interim reliefs sought for by the First Respondent/Petitioner(Government Company), in fact, on behalf of the Third Respondent/First Respondent Company, it was submitted before the 'Tribunal' that the Company is suffering from various litigations and some of the properties of the Company were also attached by 'Statutory Authorities' and that although the 'Central Bureau of Investigation' had filed a 'charge-sheet', the case is pending and all the more there was no urgency on the part of the First Respondent/Petitioner to prefer the Application in a hurried manner, for the simple reason that 'cause of action' arose, long time back.

57. On behalf of the Second Respondent/Ministry of Corporate Affairs, 'notice' was accepted by Shri Mr.Manmohan Juneja, Director General of Corporate Affairs and Mr.Sanjay Shouri, Director ,Legal & Prosecution and they supported the case of the First Respondent/Petitioner.

58. The main grievance of the 'Appellant' is that the 'Devas' Company was grossly deprived of 'Principles of Natural Justice' and in fact, more than 2400 pages were filed on the side of the First Respondent/Petitioner before the 'Tribunal' in C.P.No.06/BB of 2021 at 4.30 p.m. on the earlier date and on the next date, the Petition was numbered and listed before the 'Tribunal'. Therefore, the contention of the 'Appellant' is that there is substantial violation of 'Principles of Justice'.

59. The Learned Counsel for the Appellant also points out also points out that the First Respondent/Petitioner before the 'Tribunal' has not followed the procedure of Form WIN-7 I & II at the time of filing of the Company Petition and further that the 'Tribunal' relying upon the one sided file on behalf of the First Respondent/Petitioner had passed the impugned order.

60. Also that the Learned Counsel for the 'Appellant' points out the 'Tribunal' in the impugned order at Para 12 had observed that 'in the instant case it is not in dispute that Respondent 1 Company (First Respondent in Appeal) was given notice though it was short for duration and thus their Counsels appear before the 'Tribunal' and advances their arguments on the merits of the case).

61. The pith and substance of the plea of the Appellant is that it is directly affected by the impugned order dated 19..2021 passed by the 'Tribunal' in C.P.No.06/BB/2021 since when allegations against 'Devas' pertain to 'Fraud', 'misfeasance', etc. the 'Shareholders' ought to be arrayed as parties because of the fact that the allegations relate to Pre/Post Incorporation period/events.

62. Per Contra, it is the plea of the First Respondent that the 'Courts'/'Tribunal' are empowered to pass an ad-interim/interim orders at the stage of admission of a given case and only after hearing both sides, the 'Tribunal' thought fit found it appropriate to appoint a 'Provisional Liquidator', since it was 'ex-facie' convinced that the case involves fraud and that of 'Fraud' cannot be allowed to be perpetuated.

63. On behalf of the First Respondent/Petitioner, it is brought to the notice of this 'Tribunal', 'Devas' as a Company exists only on paper and it is a 'sham' entity engaged in acts of fraud which was mentioned in the first report filed by the 'Provisional Liquidator' on 3.2.2020.

64. On behalf of the Second Respondent, a plea is taken that the 'Appellant' is a miniscule share holder of the Third Respondent Company and that the Appellant was not authorised to 'Resolution' by the 'Board of Directors' of the Third Respondent which is essential

before anyone represents the Company. Further that, the Application for waiver to 'Apostil' and in the absence of 'Resolution' by the 'Board of Directors, itself is not maintainable.

65. The other ground taken on behalf of the Second Respondent is that from the beginning the fraudulent intent of the Company may be unearthed by the 'Provisional Liquidator' and a reference is made to Section 339 of the Companies Act, 2013 in regard to all liability for fraudulent conduct of business as a matter of fact, it is represented on behalf of the second Respondent that 'Provisional Liquidator' ought to allow to continue the unravel the massive fraud because of the reason that it is just a necessary to lift 'Corporate Veil' to identify all the persons who were acting as 'facilitators'.

66. Before the National Company Law Tribunal, Bengaluru Bench in C.P.No.06/BB/2021, the Appellant is not a 'party'. However, the Appellant being aggrieved against the impugned order, in appointing 'Official Liquidator' Bengaluru as 'Provisional Liquidator' in respect of the Third Respondent/First Respondent Company has preferred the instant Appeal as a 'Aggrieved person'.

67. It must be borne in mind that the scheme of Section 271 of the Companies Act, 2013, is to ensure that the 'winding up' of the Company is for the benefit of all concerned that the affairs of the Company, especially 'Creditors', 'Shareholders' and 'Contributories'. Under Section 273 of the Companies Act, 2013, 'Tribunal' can pass



such order in respect of a Petition for winding up under section 272 of the Act.

68. As per Section 273(1c) of the Companies Act, the 'Tribunal' has the requisite powers to pass interim orders, even against a stranger to the proceedings, with a view to preserve the property of the company. Furthermore, the 'Tribunal' has necessary powers to appoint 'Provisional Liquidator' which will also necessarily affect the 'rights' and interests of numerous parties which may not be parties to the winding up proceedings.

69. In this connection it is pertinent to make a mention that the 'Tribunal' has an inherent power to pass an 'interim order(s)', which is just and necessary to prevent an abuse of process of the 'Tribunal' or to advance the cause of Justice or to pass orders, which are vital to meet the ends of justice. In fact, the words, 'occurring' in Section 273(1)(e) of the Companies Act, 2013, 'any other order as it thinks fit' means that the 'Tribunal' in 'winding up petition' has wide powers to pass necessary orders.

70. It is relevantly pointed out that just because an 'Order of Admission' is passed at the initial stage, the Appellant's interest is not likely to be affected or prejudicial because latent and patent reasons that still it may get an opportunity to be heard when its Petition is Allowed.

71. Section 2(26) of the Companies Act, 2013, defines 'Contributory' meaning a person liable to contribute assets of the Company in the event of its being wound up. Section 2(84) of the Companies Act, 2013 defines 'shares', meaning a 'share' in the share capital of the Company and includes stock.

72. In so far as the 'Principles of Natural Justice' are concerned, it cannot be imprisoned in a strait-jacket form. It cannot be lost sight of that a necessary party is an individual who should have been arrayed as a 'party' and in whose absence, no effective order can be passed by a 'Court of Law'/'Tribunal', as the case may be.

73. It is to be remembered that a 'proper party' is a 'party' who although not a necessary party, is a 'Person' whose presence will enable the 'Tribunal' to completely, effectively, efficaciously and adequately to determine all the issues/questions encircling around a particular case.

74. It cannot be gain said that in 'Law' 'adding of parties' is a matter of judicial discretion to be exercised by a 'Tribunal' resting upon a well laid down judicial principle and this discretion can be exercised by a 'Tribunal' either on the 'Application of a Petitioner/Respondent' or on the 'Application of an Individual' who is not a party of any pending proceedings etc.

75. For 'adding of a party' or 'impleading of a party', in regard to a pending main proceedings, the 'Tribunal' is to exercise due care, circumspection and caution.

76. It is trite in Law that an 'unlawful purpose' in 'Memorandum' is void and is not be enforced. Furthermore, if a Company's business is 'unlawful', its 'locus' can be questioned on legal plane.

77. It is significant to make a mention that as per Section 271(b) of the Companies Act, 2013, 'if the Company has acted against the interests of the sovereignty and integrity of India, the order in any other manner provided, the 'Tribunal' can by an order direct the winding up of such Company under Section 272 of the Companies Act, 2013.

78. As far as the present case is concerned, although the 'Appellant' claims that it is 'Shareholder' of Third Respondent/Devas Multi Media Pvt.Ltd.(Company) presently holding 3.48% of Issued Equity Share Capital therein and in as much as the impugned order dated 19.1.2021 passed by the National Company Law Tribunal according to the Appellant, affects its right to participate in the 'Affairs' and 'Management' of Third Respondent, this 'Tribunal' taking note of the entire facts and Circumstances of the instant case, in a Conspectus Fashion at this stage, simpliciter without traversing / and not delving deep into the controversies centering around the pending main

C.P.No.06/BB/2021 pending on the file of National Company Law Tribunal, Bengaluru Bench, deems it fit and proper in 'Directing' the 'Appellant' to file necessary 'Interlocutory Application' before the 'Tribunal' seeking permission to implead itself in the main pending Company Petition setting out necessary facts/reasons for the same and if such an 'Application' is filed by the 'Appellant' for redressal of its grievances before the 'Tribunal', then the 'Tribunal' can take it on file (if it is otherwise in order) and after numbering of the same it shall provide 'reasonable opportunity of being heard' to the respective sides by adhering to the 'Principles of Justice', and to pass an order ascribing reasons on merits, of course, in the manner known to 'Law' and in accordance with 'Law'. Liberty is granted to the 'Appellant' to raise all factual and legal pleas before the 'Tribunal' and to avail the same, if it so desires/advised.

79. With the aforesaid observations/direction(s), the instant Company Appeal shall stand disposed of, but without costs. IA No.4/2021 and IA No.5/2021 are closed. However, the 'Appellant' is directed to file certified copy of the 'Impugned Order' of the 'Tribunal', within two weeks from Today.

***[Justice Venugopal M]  
Member (Judicial)***

***[ Balvinder Singh]  
Member (Technical)***

***11.02.2021  
HR***