

ITEM NO.302 Court 7 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).510/2021

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE
TRIBUNAL BAR ASSOCIATION THROUGH ITS SECRETARY Petitioner(s)

VERSUS

MINISTRY OF CORPORATE AFFAIRS & ORS. Respondent(s)
(FOR ADMISSION and IA No.59137/2021-APPROPRIATE ORDERS/DIRECTIONS)

Date : 31-05-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. A.S. Chandhiok, Sr. Adv.
 Mr. Virender Ganda, Sr. Adv.
 Mr. Ajay Kumar Jain, Adv
 Mr. Rakesh Kumar, Adv
 Mr. Vipul Ganda, Adv
 Mr. Vishal Ganda, Adv
 Mr. Satyajit A. Desai, Adv.
 Mrs. Anagha S Desai, AOR
 Ms. Aastha Trivedi, Adv
 Ms. Guresha Bhamra, Adv
 Mr. Tejasvi Chaudhry, Adv
 Mr. Satya Kam Sharma, Adv.

For Respondent(s) Mr. KK Venugopal, Ld. AG
 Mr. Balbir Singh, Ld. ASG
 Mr. R. Balasubramaniam, Sr. Adv.
 Mr. Zoheb Hossain, Adv
 Ms. Shradha Deshmukh, Adv.
 Ms. Chinmayee Chandra, Adv.
 Mr. Shyam Gopal, Adv.
 Mr. Ankur Talwar, Adv.
 Ms. Suhasini Sen, Adv.
 Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

The National Company Law Tribunal and Appellate Tribunal Bar Association has filed this Writ Petition seeking a direction to the respondent to fill up the vacancies of Chairman, NCLAT and President of NCLT without any further delay. A further direction was sought to issue letters of appointment to the candidates pursuant to the Selection procedure initiated in 2019 and to fill up the remaining vacancies of Members of NCLT and NCLAT. The petitioner has also sought a direction to extend the term of six Members of the NCLT and NCLAT for a further period of five years as they are completing the tenure by June, 2021.

When the matter was listed on 24.05.2021, Mr. Balbir Singh, learned Additional Solicitor General submitted that the process for appointment of candidates who have been selected pursuant to the procedure which was initiated in 2019 shall be expedited and orders of appointment shall be issued soon. In respect of the process to be initiated for filling up the existing vacancies, a search cum Selection Committee has to be constituted and we direct that the Selection Process shall be initiated at the earliest.

In so far as the extension of the term of the Members of the NCLT and NCLAT who are completing their tenure in June, 2021 is concerned, the learned Attorney General for India refers to Section 413 of the Company's Act 2013 according to which the President or other

members of the Tribunal shall hold office for a period of 5 years and shall be entitled for reappointment for another term of 5 years. He submitted that the government has initiated the process for reappointment by requesting the Hon'ble the Chief Justice of India to constitute a committee for the purposes of the reappointment of members to the NCLT and NCLAT.

Mr. Amarjit Singh Chandhiok, learned senior counsel appearing for the petitioner submitted that he cannot have any objection to the process of re-appointment being initiated immediately but requested that the members who are completing their tenure should be permitted to continue till the process of reappointment is completed. He brought to our notice that there are 39 members at present for a sanctioned strength of 63 and the depletion of the strength of the members will adversely affect the smooth functioning of the Tribunals.

Mr. Amarjit Singh Chandhiok, learned senior counsel was supported by Mr. Pradeep Rai, and Mr. Ajay Jain who argued that the members who are completing their tenure should be permitted to continue in the interest of justice and for the smooth functioning of the Tribunals.

As the Government has already initiated the process of reappointment by writing to the Hon'ble Chief Justice, we trust and hope that the reappointment process should be completed expeditiously, as there is no necessity of issuance of any advertisement for

participation of other eligible candidates. Reappointment of members can be considered separately without waiting for the process of fresh appointments to commence. As the strength of the members of the NCLT and NCLAT is depleting which would be detrimental to the smooth functioning of the Tribunals, we direct the Government to complete the process at the earliest and not later than two months.

Writ petition and pending applications, if any, shall stand disposed of.

(B. PARVATHI)
COURT MASTER

(ANAND PRAKASH)
COURT MASTER