

# NCLAT

National Company Law  
Appellate Tribunal



Advocates  
& Solicitors

## Union of India (MCA) vs. Oriental Bank of Commerce

<b>Citation</b>	<b>Company Appeal (AT) (Insolvency) No. 1417 of 2019</b>
<b>Court</b>	<b>National Company Law Appellate Tribunal</b>
<b>Date</b>	<b>22 May 2020</b>
<b>Bench</b>	<b>Justice Venugopal M. J., V. P. Singh J.</b>

- **BACKDROP –**

- The Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench while passing an order on 22.11.2019 in **(IB)-939(PB)/2018** titled as **‘Oriental Bank of Commerce v M/s Sikka Papers Ltd. & Ors.’** had observed the following:

- *“4. We further direct that in all cases of Insolvency & Bankruptcy Code and Company Petition, the Union of India, Ministry of Corporate Affairs through the Secretary be impleaded as a party respondent so that authentic record is made available by the officers of the Ministry of Corporate Affairs for proper appreciation of the matters. This shall be applicable throughout the country to all the benches of National Company Law Tribunal. The Registrar shall send a copy of this order to all NCLT benches so that respective Deputy Registrar may ensure that proper parties are impleaded and directed the matter to be listed for further consideration on 11.12.2019.”*

- **INSOLVENC PETITION –**

- In furtherance of the aforesaid backdrop, with a view to ensure the reliability and credibility of the master data of corporate personas as available with the Ministry of Corporate Affairs (**‘MCA’**) for the purposes of adjudication of applications filed under the Insolvency and Bankruptcy Code, 2016 (**‘Code’**), the Principal Bench, National Company Law Tribunal, New Delhi (**‘PB’**) passed the abovementioned direction to facilitate the availability of authentic record for the proper appreciation of the matters being contested before it.

- **APPEAL –**

- The instant appeal being **‘Union Of India v Oriental Bank of Commerce’** was preferred by the Central Government before the Hon’ble National Company Law Appellate Tribunal, New Delhi (**‘NCLAT’**) to challenge the direction passed by the PB qua impleadment of MCA through its Secretary. When the Appeal was first listed before the NCLAT on 10.12.2019 for admission, the NCLAT was pleased to stay operation of the order passed by PB on 22.11.2019.

- **CONTENTIONS –**

- The impugned order bristles with numerous infirmities and that the Adjudicating Authority does not possess the powers to pass an order, which was in the ‘nature of rule’ under the guise of an ‘order’.
- The ‘rule making power’ is the exclusive domain of the Central Government (being a subordinate legislation) and the same is required to be placed after notification before the August House of the Parliament.
- The Adjudicating Authority before passing the impugned order ought to have issued notice to the Union of India, since the subject matter in issue concerns about the imposition of a new rule.
- The PB was not acting as an ‘Adjudicating Authority’ in terms of Section 60 of the Code and the impugned order has a devastating effect, since the Adjudicating Authority (Tribunal) lacks inherent jurisdiction to pass the same.

- **JUDGMENT –**
- Upon adjudication, the NCLAT held that it is pertinent to pointed out that if a certain thing is to be performed in a particular manner, then the same is to be done in that way. In fact, a procedural wrangle cannot be allowed to be shaken or shackled with.
- Emphasis was given to the axiomatic principle in law that if a third party is concerned with a dispute, that party is to be arrayed as a necessary or proper party to the adjudication of main issue centering around the dispute. Besides this, an opportunity of hearing is to be given to a third party to explain its stand. Suffice it for this Tribunal to make a pertinent mention that the rules of ‘principles of Natural Justice’ are to be adhered to by the Tribunal because of the latent and patent fact that the act of Tribunal/ Court/ Competent Authority shall cause no harm to any person.
- A necessary party is a person who ought to have been arrayed as a party and in whose absence no effective order can be passed by a Court of Law/ Tribunal/ Appropriate Authority. A proper party is a party who although not a necessary party is a person whose presence will enable the Authority to effectively, efficaciously, comprehensively and adequately adjudicate upon all the controversies centering around a given case.
- In fact, ‘impleadment of parties’ is only a matter of fact and not a matter of Law. Addition of parties/ striking out parties is a matter of discretion to be exercised by a Tribunal/ Court based on sound judicial principles. The said discretion can be exercised either on the application of a Petitioner/ Respondent or suo-motu or on the application of a person who is not a party to any pending proceedings. However, the said discretion cannot be exercised in a cavalier and whimsical fashion.
- It is for the concerned Tribunal/ Court/ Authority to subjectively consider whether a party is a proper/necessary party for an effective and efficacious adjudication of the controversy involved in a given case based on facts and circumstances of a case, which float on the surface. In this regard, with an utmost care, caution and circumspection a finding has to be rendered by passing necessary orders in an objective and dispassionate manner for impleading a party to take part in the main arena of proceedings. Undoubtedly, a notice will have to be issued to the newly impleaded party and a just, fair and final order can only be passed after hearing the Objections/ Reply of the said party.
- NCLAT considered that the Central Government was not provided with an adequate opportunity of being heard in the subject matter in issue and as such a wholesale, blanket and omnibus direction cannot be issued in single stroke. It further held that the Secretary, MCA be impleaded as a necessary Party/ even as proforma Respondent is to be determined only on a case to case basis when the need of a given case arises for rumination of issues, which comes up before the respective Tribunals and when an order like the impugned one is passed by the ‘Tribunal’ or ‘Competent Authority’ without hearing the party concerned, by not following the ‘principles of Natural Justice’ by not initially ordering notice and not taking into consideration of the objections of that party, certainly, it will result in serious miscarriage of justice, besides causing undue hardship.
- Whether to implead the Central Government as a *proforma* Respondent is for the individual applicant to take a call because he is the ‘*dominus litus*’ although, when

no relief is claimed against the Union of India, it need not even be a *proforma* party in an application filed under Code, since it is an Otiose one. It is only in public interest/ criminal offences being taken up before the special Court under Section 435 of the Companies Act, 2013 in a Company Petition/ Appeal before the Tribunal, the Union of India through any authorized officer/ person can be added as a party and in other cases it is for the Applicant/ Appellant or for the Tribunal to take an ultimate decision for showing a person as a necessary or proper party.

- An Adjudicating Authority (National Company Law Tribunal) is a quasi-judicial one and has to abide by the principles of 'Natural Justice'. It is only after the Adjudicating Authority has provided a reasonable opportunity of being heard to the other side, it can pass appropriate orders. If an order is passed by the Tribunal, without affording an opportunity of hearing to the parties, the same is unsustainable in Law. [Sree Metaliks Ltd. v Union of India (2017) 203 Com Cases 442]
- Thus, for the reasoning provided above, NCLAT held it is inevitable and irresistible conclusion that the directions issued to implead the 'Secretary of Ministry of Corporate Affairs' as party Respondent in all cases of I&B Code is nothing but beyond the power of the Tribunal and it tantamount to imposition of a new rule in a compelling fashion. In short, the impugned order making it applicable throughout the country to all the Benches of the National Company Law Tribunal is untenable one and the said order suffers from material irregularity and patent illegality in the eye of Law.