

HIGH COURT OF GUJARAT**RITSPIN SYNTHETICS LIMITED***Versus***TIRUMALA BALAJI ALLOYS PRIVATE LIMITED****Date of Decision:** 03 November 2020**Citation:** 2020 LawSuit(Guj) 1019**Hon'ble Judges:** [Umesh A Trivedi](#)**Case Type:** Special Civil Application**Case No:** 12017 of 2020**Subject:** Constitution**Acts Referred:**[Constitution Of India Art 227, Art 226](#)[Companies Act, 2013 Sec 408, Sec 419, Sec 419\(1\)](#)[Insolvency And Bankruptcy Code, 2016 Sec 61, Sec 7, Sec 4](#)[National Company Law Tribunal Rules, 2016 R 49\(2\), R 37](#)**Final Decision:** Petition dismissed**Advocates:** [Mihir Joshi](#), [Nanavati Associates](#), [Ratnanko Banerjee](#), [Ujjaini Chaterjee](#),
[Arjun Asthana](#), [Bhash H Mankad](#)**Cases Referred in (+):** 4**Umesh A. Trivedi, J.**

[1] By filing this writ petition under Article 226 and/or 227 of the Constitution of India, the petitioner challenged the orders passed on various dates by the National Company Law Tribunal, Indore Bench at Ahmedabad (for short, 'Adjudicating Authority') while conducting the matter being Transfer Petition No.19 of 2019 [Company Petition (I.B.) No.260 of 2019] filed by the Respondent No.1 against the petitioner under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'the Code') praying for following reliefs:

(a) That this Hon'ble Court may be pleased to issue a writ of prohibition and/or an appropriate writ, order and/or direction, quashing and setting aside the impugned

orders dated 12.12.2019, 16.01.2020, 21.02.2020, 20.03.2020, 09.07.2020, 07.08.2020, 27.08.2020 and 11.09.2020 passed by the Adjudicating Authority in Transfer Petition No.19 of 2019 [Company Petition (I.B.) No.260 of 2019] filed by the Respondent No.1.;

(b) This Hon'ble Court may be pleased to issue a writ of prohibition prohibiting the Adjudicating Authority from adjudicating the Transfer Petition No.19 of 2019 (Company Petition (I.B.) No.260 of 2019) pending before it;

(c) Pending hearing and final disposal of the present petition, this Hon'ble Court may be pleased to direct the Adjudicating Authority to adjourn the proceedings of Transfer Petition No19 of 2019 (Company Petition (I.B.) No.260 of 2019);

(d) Ex-parte ad-interim relief in terms of payer (c) may kindly be granted AND,

(e) Such other and further relief as deemed just and expedient may be granted.

[2] Respondent No.1 herein filed proceedings under Section 7 of 'the Code' before the NCLT, Ahmedabad Bench, Ahmedabad on 18.3.2019 which was listed before the Bench on 24.4.2019. The NCLT, Ahmedabad issued notice upon the petitioner herein directing him to file objections, if any, and made returnable on 4.7.2019. Though, no details are put forward what happened after service of the notice to the petitioner. However, petitioner filed Special Civil Application No.15841 of 2019 before this Court praying for quashing and setting aside orders dated 4.7.2019 and 28.8.2019 passed by the NCLT, Ahmedabad directing petitioner to file its objections to the Company Petition (I.B.) No.260 of 2019. After arriving at broad consensus between the petitioner and Respondent No.1 herein, this Court vide an order dated 10.12.2019 in the aforesaid Special Civil Application on the statement of learned advocates for both the parties appearing therein, ordered that let the Special Bench of NCLT, under order dated 15.10.2019 (of Registrar, NCLT, Delhi) hear the matter afresh denovo. In view of the aforesaid joint request, this Court directed Special Bench of NCLT comprising of the Officers named therein in view of order dated 15.10.2019 of Registrar, NCLT, Delhi to hear the matter No.C.P.(I.B.) No.260/7/NCLT/AHM/2019 afresh denovo and as a consequence, all the orders passed previous to the order dated 15.10.2019 were quashed and set aside. At the same time, this Court determined next date of hearing before the Special Bench of NCLT which was fixed on 12.12.2019.

[3] On 12.12.2019, parties appeared through their counsels and the learned advocate for the petitioner sought for an adjournment to file reply. The Tribunal, NCLT, Indore Bench at Ahmedabad (Adjudicating Authority) numbered it as TP 19 of 2019 [CP (IB) 260/2019] granted 2 weeks time to the petitioner for filing objections to the proceedings initiated against it and the matter was ordered to be listed on 16.1.2020.

Again on that day, learned counsel for the petitioner requested for further time to file reply and it was granted, though vehemently objected to by the Respondent No.1 herein, for 10 days to file reply / objections and thereafter, the matter was posted for hearing on 21.2.2020. Again on that day, the petitioner asked for further time to file reply. After recording earlier events, whereby petitioner was granted sufficient time, the 'Adjudicating Authority', though objected to by Respondent No.1 herein, granted one more week to the petitioner with a cost of Rs.20,000/- payable to the petitioner before the next date of hearing as Respondent No.1 herein is coming all the way from Kolkatta and the next date of hearing was fixed on 20.3.2020. However, on 20th March, 2020, proceedings were adjourned keeping in mind the notice issued by the Principal Bench, NCLT dated 15.3.2020 in view of the advisory issued by the Central Government considering the seriousness of Pandemic Novel Corona Virus, the case was adjourned to 24.04.2020. However, one Interlocutory Application No.63 of 2020 claimed to have been affirmed on 17.3.2020, it is not clear as to on which date it was tendered before the 'Adjudicating Authority', praying for recalling of orders dated 12.12.2019, 16.1.2020 and 21.2.2020 and requesting to issue fresh notice upon the petitioner under Rule 37 of the NCLT Rules of the proceedings. Thereafter as recorded in an order dated 9.7.2020 which is at page No.24, despite sufficient opportunities corporate debtor i.e. petitioner neither appeared nor filed affidavit in-reply, the matter was ordered to be proceeded ex-parte and next hearing was adjourned to 27.8.2020. After 20th March, 2020 and before 9.7.2020 on how many occasions, the proceedings were adjourned and listed before the Tribunal is not stated by the petitioner in this petition nor any contemporaneous record is produced by it. The petitioner has produced an order dated 7.8.2020 passed by the Tribunal being order in the proceedings TP/MP/19 of 2019 [CP(IB) 260 of 2019] with I.A.No.63/2020, it is recorded that no one appeared for corporate debtor in spite of notice. Over and above that, main matter was ordered to appear on 27.8.2020 and in view of that order, I.A.No.63 of 2020 stood disposed of.

[4] It is the case of the petitioner that though learned advocate for the petitioner logged in for hearing for 7.8.2020, his request to join in from the waiting room is denied by the host as a result of which he could not appear. In support of the said assertion, a copy of Email dated 7.8.2020 sent to the registrar-ahm@nclt.gov.in at about 11:38 a.m. is annexed with the petition at page No.37. Thereafter, a day prior to the date fixed for hearing of the main matter before the 'Adjudicating Authority', other 2 (two) Interlocutory Applications were filed, one application praying for setting aside ex-parte order dated 7.8.2020 passed in I.A.No.63/2020 under Rule 49 (2) of the NCLT Rules and another application was praying for setting aside ex-parte order dated 7.8.2020 passed in main proceedings i.e. Company Petition (I.B.) No.260/2019 to proceed ex-parte, again under Rule 49 (2) of the NCLT Rules.

[5] On 27.8.2020, main proceedings were listed for hearing where learned counsel for the petitioner appeared before the Tribunal. It has been recorded that despite direction and imposition of cost, petitioner did not file reply, though grant of further adjournment opposed vehemently, the Tribunal had granted further 3 days' time to file reply without fail and the petitioner was directed to pay cost as per earlier order otherwise their defense would not be taken into consideration and the matter was then adjourned to 11.9.2020.

Though other 2 (two) Interlocutory Applications claimed to have been prepared on 26.8.2020, if filed before the 'Adjudicating Authority', petitioner has not made a reference of it nor his advocate uttered a line about it while the main matter was posted for hearing on next day i.e. 27.8.2020. Though it is asserted in the petition at para 3.10 that on 27.8.2020 filing of applications were brought to the notice of 'Adjudicating Authority' and even order dated 10.12.2019 passed by this Court in earlier proceedings, the 'Adjudicating Authority' again directed the petitioner to file its reply and therefore, the petitioner was constrained to file reply which was filed without prejudice to its rights and contentions, the same was then adjourned to 11.9.2020. As observed in the order dated 11.9.2020, pleadings appeared to be completed and matter was posted for hearing on 24.9.2020.

[6] Coincidentally, present petition before this Court is also affirmed a day before the proceedings are kept for hearing by the 'Adjudicating Authority'. The fact remains that the conduct of the petitioner is not of an honest litigant though all litigants are entitled to raise and plead all legal contentions in the proceedings, it should not be with a view to delay the proceedings where main proceedings under 'the Code' is expected to be concluded within a specified time. As observed earlier, on a day prior to the main proceedings posted for proceeding further, the petitioner has come out with certain Interlocutory Applications, that too, though petitioner was represented by the advocate on the next date of hearing without disclosing it to the Tribunal or prayed for hearing of those Interlocutory Applications more particularly, on 27.8.2020.

[7] Heard Mr.Mihir Joshi, learned senior counsel for the petitioner. He has submitted that the 'Adjudicating Authority' could not have proceeded in the main matter without deciding Interlocutory Applications filed praying for recalling of order dated 7.8.2020 in I.A.No.63/2020 as also in the main proceedings. It is further submitted that the I.A.No.63/2020 came to be disposed of without affording reasonable opportunity of hearing on 7.8.2020. It is further submitted that the proceedings before the 'Adjudicating Authority' are without jurisdiction as this Court directed it to decide the proceedings afresh denovo and when it quashed orders passed prior to 15.10.2019 continuation of proceedings on the basis of filing of application under Section 7 of 'the Code' on 18.3.2019 and order issuing notice dated 24.4.2019 are contrary to the law

for that the 'Adjudicating Authority' does not have jurisdiction. It is further submitted that there is a clear error of procedure. Interlocutory Applications were kept pending and the 'Adjudicating Authority' proceeded to hear main matter. If it is decided petitioner may have explanation to be considered for not remaining present on that day which is already offered. It should be considered by 'Adjudicating Authority' unless it is determined by it, drawing of inferences are unwarranted.

7.1 It is further submitted that subsequent facts cannot vest jurisdiction as effective from the date of initiation. It is further submitted that neither acquiescence nor consent can confer jurisdiction to the authority which it does not have.

7.2 It is further submitted that when this Court in earlier round of litigation directed proceedings to be conducted afresh denovo, it should be after presenting the proceedings afresh before the correct forum. It is submitted that since initiation date as defined under Section 5(11) of 'the Code' has some significance in view of Sections 13(1) (b), 18(a) (iii) and Section 44 of 'the Code' when proceedings are ordered to be conducted afresh denovo, it was incumbent upon Respondent No.1 to re-present / re-file the proceedings under Section 7 of 'the Code' before the correct forum. It is further submitted that it was incumbent upon the 'Adjudicating Authority' of a correct forum to issue notice to the petitioner afresh. It is further submitted that at present proceedings carried on by the Indore Bench which does not exist at all in view of a notification dated 31.1.2020 notifying jurisdiction of State of Madhya Pradesh to be exercised by the Ahmedabad Bench of NCLT till the operationalization of Indore Bench of NCLT which is to be notified by the Central Government by a subsequent notification. It is further submitted that since the grievance made by the petitioner by filing Interlocutory Applications praying for recalling of orders and as such, there is no decision on the Interlocutory Applications by the 'Adjudicating Authority', this Court may direct the 'Adjudicating Authority' to decide the same on its merit for whatever worth it has.

7.3 Mr.Joshi, learned senior counsel relied on a decision of [Harshad Chimanlal Modi V/s. DLF Universal Ltd. and another](#), 2006 1 SCC 364 for a proposition that, presentation of a plaint in a correct forum after its return is not a case of transfer and therefore, proceedings could not have been continued from the stage at which it stood in the wrong forum since the proceedings were void-ab-initio. In short, the submission is, on a direction by the High Court to start denovo proceedings afresh, the 'Adjudicating Authority' would have to take up the proceedings from the presentation of it.

7.4 Reliance is also placed on a decision in the case of [Mohannakumaran Nair V/s. Vijayakumaran Nair](#), 2007 14 SCC 426 to contend that, the question with regard to the jurisdiction is required to be determined with reference to the date on which the suit is filed and entertained and not with reference to a future date. Therefore, it is submitted that the day on which the proceedings were initiated on presentation before Ahmedabad Bench i.e. 18.3.2019 it had no jurisdiction to entertain the same. Not only that, even on a direction to start proceedings afresh denovo, the 'Adjudicating Authority' has continued from the stage where it was pending. Therefore, it is submitted that subsequent thereto even if the proceedings can be said to be before the authority having jurisdiction cannot salvage the situation. Therefore, it is submitted that subsequent facts cannot vest jurisdiction as effective from the date of initiation thereof.

7.5 Reliance is also placed on a decision in the case of [Kanwar Singh Saini V/s. High Court of Delhi](#), 2012 4 SCC 307 for a proposition that, conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court and if the Court passes order / decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Relying on the aforesaid decision, it is submitted that acquiescence by a party equally should not be permitted to defeat the legislative animation.

7.6 He has further relied on a decision in the case of [Chairman - cum - Managing Director, Coal India Limited and other V/s. Ananta Saha and others](#), 2011 5 SCC 142 more particularly para 28 to 34, it is submitted that, if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. It is, therefore, submitted that initiation of proceedings before the 'Adjudicating Authority' is not in consonance with law as on that day, it had no jurisdiction to entertain the application under Section 7 of 'the Code' against the petitioner-Company which has its Registered Office within a territorial jurisdiction of State of Madhya Pradesh. Therefore, it is submitted that the petition be allowed, orders as prayed for in prayer clauses be quashed and set aside.

[8] Mr. Ratnanko Banerjee, learned senior counsel appearing for Respondent No.1 submitted that issuance of notice under Rule 37 of the NCLT Rules can never be said to be jurisdictional issue as it has been complied with in the form of direction by this Court fixing next date of hearing to be 12.12.2019 in earlier round of litigation. It is submitted that issuance of notice under Rule 37 of NCLT Rules is only for the purpose of putting the party to a notice of such proceedings which is initiated against him.

8.1 It is further submitted that when this Court directed the 'Adjudicating Authority' to start proceedings afresh denovo quashing earlier orders prior to 15.10.2019, directed both the parties to appear before 'Adjudicating Authority' for the next date of hearing which is fixed on 12.12.2019 and pursuant thereto, petitioner appeared before it and had not raised any objections with regard to either re-presenting (re-filing) the proceedings or issuance of fresh notice under Rule 37 of NCLT on re-presentation (re-filing) of proceedings, petitioner cannot be heard to say that the 'Adjudicating Authority' lacks jurisdiction. It is further submitted that when the parties are asked to appear on a particular date, it can safely be concluded that Rule 37 of NCLT Rules is complied with. It is further submitted that parties before this Court in earlier round of litigation were conscious in understanding the proceedings to be carried on further.

8.2 He has further submitted that learned counsel for the petitioner has not argued that the 'Adjudicating Authority' lacks subject matter / inherent jurisdiction over the proceedings. According to his submission, what is raised is an issue with regard to a territorial jurisdiction of the 'Adjudicating Authority'.

8.3 It is further submitted that issuance of notice, that too, under Rule 37 of the NCLT Rules is for the purpose of bringing it to the notice of the party that against it, Corporate Insolvency Resolution Process is initiated under 'the Code'. It is further submitted that not only the petitioner had not raised the objection of issuing notice afresh at the first available opportunity on date of hearing fixed i.e. 12.12.2019 before the 'Adjudicating Authority', on the contrary, the petitioner requested for time to file reply to the proceedings. Therefore, it is submitted that by the conduct of the party, either the requirement of notice under Rule 37 of the NCLT Rules should be presumed to be complied with or waived by the party itself by its conduct. Once that has been done, petitioner cannot be heard to say no notice as required under Rule 37 of the NCLT Rules is issued.

8.4 He has further submitted that when the proceeding was first filed before the 'Adjudicating Authority', though vide a notification dated 8th March, 2019, Central Government constituted NCLT, Indore Bench at Indore, there was no Presiding Officer nor any Member appointed and therefore, in effect, there was no Tribunal/ 'Adjudicating Authority' available at Indore. However, noticing such issue time and again, NCLAT had to intervene and in consultation with Ministry of Corporate Affairs under Section 419 of the Companies Act constituted NCLT Bench at Ahmedabad to exercise and discharge powers and functions for the Tribunal for the matters pertaining to territorial jurisdiction of Indore Bench. Therefore, vide an order dated 15.10.2019 signed by Registrar, NCLT directed that NCLT Indore Bench at Ahmedabad to be presided over by the judicial and technical members named

therein directing it to sit on every Thursday and Friday till further orders. It is further submitted, in that view of the matter, in earlier round of litigation before this Court, petitioner had agreed to proceed with the proceedings before the present 'Adjudicating Authority' (though said to be Special Bench at Ahmedabad) of course, afresh denovo. Neither at that time nor thereafter, as submitted by the learned advocate for the Respondent No.1, petitioner has raised an issue of jurisdiction for the matter to be determined by the present 'Adjudicating Authority'.

8.5 He has further submitted that since the petitioner has already filed the reply to the proceedings initiated under Section 7 of 'the Code' and also paid the cost as ordered by the 'Adjudicating Authority' though claimed in this petition to be under protest, it was not so said before the 'Adjudicating Authority' either at the time of filing it or anytime subsequent thereto. It is further submitted that, drawing attention to para-5 of the petition on one hand territorial jurisdiction of the 'Adjudicating Authority' is objected to on the ground that Indore Bench, Madhya Pradesh, would have jurisdiction to entertain the proceedings, if at all such petition to be filed it should be filed before the Madhya Pradesh High Court.

8.6 Next, it is submitted that, if at all there is any irregularity is said to be committed, it may be a lack of procedure and not lack of inherent jurisdiction. Now when they have already submitted the reply / objection to the proceedings it can be considered on merit before the 'Adjudicating Authority'. At any rate, it is submitted that in view of Section 61 of 'the Code' an appeal is provided for against any order of the 'Adjudicating Authority' and therefore, this petition raising issue of lack of territorial jurisdiction and infraction / breach of procedure, if it is to be said so, should not be entertained. However, it is submitted that even if 'Adjudicating Authority' misconstrued it to be a transfer proceedings, Indore Bench at Ahmedbaad or whatever nomenclature assigned to the proceedings, is of no consequences. At no point of time, there was anyone to preside over the NCLT, Indore Bench at Indore either judicial or even technical member available, the proceedings initiated at Ahmedabad Bench is proper and in accordance with law. At the same time, It is submitted that this writ petition, in view of the availability of statutory effective alternative remedy, should not be entertained and it is required to be rejected with cost.

[9] Though Respondent No.2 is served, no one appears.

[10] Heard the learned advocates for the appearing parties. The issue raised by the petitioner in the present proceedings praying for writ of prohibition and/or appropriate writ, order and/or direction, quashing and setting aside the impugned orders dated 12.12.2019, 16.01.2020, 21.02.2020, 20.03.2020, 09.07.2020, 07.08.2020,

27.08.2020 and 11.09.2020 passed by the Adjudicating Authority in Transfer Petition No.19 of 2019 [Company Petition (I.B.) No.260 of 2019] filed by the Respondent No.1, orders of various dates passed by the 'Adjudicating Authority' are the orders passed in presence of the parties except order dated 7.8.2020. Vide an order dated 7.8.2020, I.A. No.63/2020 requesting for recalling the orders dated 12.12.2019, 16.01.2020 and 21.02.2020 and praying for issuance of fresh notice upon the applicant under Rule 37 of the NCLT Rules came to be disposed of. The orders dated 12.12.2019, 16.01.2020 and 21.02.2020 are the orders where petitioner has prayed for an adjournment for filing reply and 'Adjudicating Authority' generously granted time to the petitioner to file the same in an extended period. Despite that, the petitioner has failed to file the same and therefore, a last opportunity was granted to the petitioner to file the same granting one week time with a cost of Rs.20,000/- payable to the Respondent No.1 herein before the next date of hearing. Though, I.A.No.63/2020 appears to have been affirmed on 17.3.2020, no date of presentation thereof to the 'Adjudicating Authority' is coming out on record of the present petition. However, after an order dated 21.2.2020, matter was adjourned to 20.3.2020. Therefore, instead of one week from 21.2.2020, the petitioner had sufficient time even to file reply before the next adjourned date i.e.20.3.2020. Despite that, it has not been filed. But in view of notice issued by Principal Bench, NCLT, dated 15.3.2020, in view of notification issued by the Central Government considering the seriousness of Pandemic Corona Virus, the case came to be adjourned on 24.4.2020. Neither the petitioner nor the Respondent no.1 have produced any order in respect of proceedings conducted on 24.4.2020.

[11] Not only that, the petitioner has not produced an order dated 18.6.2020 which was the date when IA 63/2020 filed by the petitioner placed for hearing before the 'Adjudicating Authority'. However, Respondent No.1 has provided copy of order dated 18.6.2020 which appears to have been passed in I.A. 63/2020. Though, the date on which I.A.No.63/2020 presented is not disclosed but order dated 18.6.2020 reveals that neither petitioner nor his counsel was present on that day and therefore, in I.A.No.63/2020 parties were directed to appear before the Bench and notice came to be issued to the petitioner also and further hearing fixed on 7.8.2020. The excuse shown by the petitioner for an absence on 7.8.2020, that though he logged in his request to join in from the waiting room was denied by the host, nothing is pleaded for absence on earlier two occasions i.e. 18.6.2020 and 09.07.2020. As such, from the proceedings, it appears that the petitioner is following proceedings and orders passed by the Tribunal promptly but files and challenges the proceedings at his ease on a last moment only with a view to delay the proceedings. However, though said IA was listed on 18.6.2020, neither petitioner nor his advocate appeared, therefore, notice had to be issued and the parties were directed to appear before the Bench and adjourn the proceedings on 7.8.2020. However, before that on 9.7.2020, main proceeding was

listed for hearing. However, again neither petitioner nor his advocate appeared and the 'Adjudicating Authority' had to observe that despite sufficient opportunities (at petitioner's instance) Corporate Debtor i.e. petitioner neither appeared nor filed Affidavit-in-reply hence, the matter proceeded for ex-parte hearing against the Corporate Debtor.

[12] As could be seen from the petition and the documents annexed with it, there is no whisper about notice issued by the 'Adjudicating Authority' vide an order dated 18.6.2020 and a direction to the party to appear before that Bench. As such, on filing of the Interlocutory Application, it is for the petitioner to follow the same and there is no requirement of issuance of notice thereof. When one advocate can appear before the Tribunal surely the others would have appeared but there is no explanation offered for not appearing on earlier occasions i.e. 18.6.2020 and 9.7.2020, there is also no explanation offered for absence of an advocate. Therefore, it appears that the said absence and grievance about non joining by the Host to the hearing on 7.8.2020, never complained of thereafter when the 'Adjudicating Authority' heard the matter, is the convenient excuse shown for hearing dated 7.8.2020.

[13] Though, learned advocate for the petitioner appeared on 27.8.2020 before the 'Adjudicating Authority', as recorded in the order, he has not raised any grievance about disposal of IA No.63/2020 on 7.8.2020 without hearing and though 2 Interlocutory Applications appears to have been affirmed on 26.8.2020 challenging the order dated 7.8.2020 passed in IA No.63/2020, recalling of which, prayed for in it, no request even orally or in writing appears to have been made on 27.8.2020 or any date subsequent thereto to deal with the same. At any rate, it can safely be concluded that petitioner has failed to follow the proceedings and on the contrary, he is complaining about non disposal thereof. If at all, the petitioner was really interested in getting the order dated 7.8.2020 passed in IA No.63/2020 recalled, same should have been filed the day next on which the advocate for the petitioner raised grievance that he was not permitted to enter the hearing. However, it is clear that the petitioner has not cared to look at the order dated 7.8.2020 on that very day or even on next day. It is only a day prior to next date, further Interlocutory Applications praying for recalling of orders dated 7.8.2020 were affirmed, which is nothing but an attempt to further delay the proceedings and to complain about non dealing with the same. Furthermore, though all proceedings including Interlocutory Applications were presented before the 'Adjudicating Authority' on 11.9.2020 i.e. next adjourned date, and the learned advocate representing the petitioner was also present and reply / objection is also filed would never fail to press before the 'Adjudicating Authority' to hear those interlocutory applications praying therein to recall all earlier orders. However, on that day, it appears that no further proceedings were carried but it was adjourned on 24.9.2020. It is

pertinent to note that exactly a day prior to the next adjourned date before the 'Adjudicating Authority', this petition is affirmed and it was first circulated on 30.9.2020. Thus, the attempts on the part of the petitioner and the conduct to the Court / Tribunal are of an unfair litigant.

[14] The petitioner not only by its conduct but in their attempts to further delay the proceedings dis-entitled itself to any relief which is otherwise not required to be granted to it. The petitioner is silent about his absence in proceedings before the 'Adjudicating Authority' on 18.6.2020 and 9.7.2020 but has raised the said grievance when absence of the petitioner is noted in the order dated 7.8.2020, by submitting an E-mail with the request to join in from the waiting room denied by the host. Except the said E-mail, neither on the next day i.e. 8.8.2020 nor on the date it is adjourned or any subsequent day thereto, any grievance raised about not permitting entry into hearing by the host if it would have been brought to the notice of the 'Adjudicating Authority', it could have been reduced into writing in the order itself. Not only that, the petitioner appears to be aware about next date of adjournment despite the absence on 7.8.2020 and he appeared before the 'Adjudicating Authority' through his advocate and he never mentioned about any other Interlocutory Applications filed, that too, prior to the said date of hearing and on the contrary, in para-3.10 of the present petition, on oath, claimed that on 27.8.2020, the applications filed by the petitioner were brought to the notice of the 'Adjudicating Authority' and the order dated 10.12.2019 passed by this Court was brought to the notice of the 'Adjudicating Authority' which runs counter to what is recorded in proceedings dated 27.8.2020. What is recorded or not recorded in an order of the Court or Tribunal cannot be disputed by way of affidavit, that too, unsupported by any contemporaneous record. At the same time, no new things could have been stated even on oath which is not there in the order passed by the Court or Tribunal. However, on that day, the petitioner was granted further time at its request for 3 days to file reply as stated in para 3.10 of the petition and further, directing him to pay the cost as ordered earlier. However, it is asserted that petitioner, without prejudice to its rights and contentions, filed the reply before the 'Adjudicating Authority'. Again the proceedings were adjourned to 11.9.2020. From the order sheet dated 11.9.2020, at page No.53, it is revealed that on that day also, the petitioner has never requested to hear or dispose of other Interlocutory Applications filed by it. On the contrary, filling of Interlocutory Applications are nothing but an attempt of the petitioner to get the main proceedings further delayed without bringing it to the notice of the authority to hear and dispose of the same.

[15] As such, the issue raised by the petitioner with regard to jurisdiction of the present 'Adjudicating Authority' is about territorial jurisdiction only. As such, it does not lack inherent jurisdiction and therefore, proceedings continued before it cannot be said

to be illegal. Either consent or acquiescence may not confer the jurisdiction where there is inherent lack of jurisdiction but when question is about only a lack of territorial jurisdiction, the party can waive the same by not only his conduct but express willingness to ask for adjournment repeatedly to file reply to the proceedings initiated against it before the present 'Adjudicating Authority'. Therefore, decision relied on by the learned advocate for the petitioner in the case of **Kanwar Singh Saini (supra)** has no applicability for the precedent stated therein. At any rate, as observed earlier, since the beginning, NCLT, Ahmedabad was exercising jurisdiction not only for the State of Gujarat but also for the State of Madhya Pradesh. However, for the first time, it appears that vide a notification dated 8.3.2019, for the State of Madhya Pradesh, the Central Government has constituted NCLT, Indore Bench at Indore. However, it is not the case of either side that it has ever become functional or operational after its constitution. Therefore, NCLAT passed an order in a matter before it and considering along with it letter dated 7.10.2019 of Ministry of Corporate Affairs, President NCLT under Section 419 of the Companies Act, 2013, constituted NCLT bench at Ahmedabad to exercise and discharge powers and functions of the Tribunal for the matters pertaining to territorial jurisdiction of Indore Bench as notified vide a notification dated 8.3.2019. The said decision of President, NCLT, has culminated into an order dated 15.10.2019 issued by Registrar, NCLT and the petitioner as also the Respondent No.1 relying on the same, submitted to the jurisdiction of the present 'Adjudicating Authority' and on consensus, requested this Court in an earlier round of litigation to direct the NCLT, Ahmedabad i.e. the present 'Adjudicating Authority' to start proceedings directing to hear the matter afresh denovo and as a consequence thereof, orders passed earlier to date 15.10.2019 were quashed by the High Court in earlier round of litigation. Therefore, petitioner cannot have any grievance about the present 'Adjudicating Authority' to adjudicate the proceedings against it on the ground of lack of jurisdiction.

[16] Not only that the territorial jurisdiction of the present 'Adjudicating Authority' was not objected to but on the contrary, it was agreed upon in the earlier round of litigation by the petitioner and submitted to it. Therefore, the petitioner cannot be permitted to raise even the issue of territorial jurisdiction of the present 'Adjudicating Authority'. At any rate, on and from 15.10.2019, when petitioner agreed the proceedings being conducted denovo and afresh, quashing and setting aside orders passed prior to 15.10.2019, he can be said to have submitted to the jurisdiction of the present 'Adjudicating Authority'. Over and above that, Court had directed both the parties to appear before the 'Adjudicating Authority' on next date which was fixed on 12.12.2019. On 12.12.2019, or at-least two adjourned dates thereafter, petitioner has never raised any objection with regard to non-issuance of fresh notice under Rule 37 of the NCLT

Rules. On the contrary, petitioner went on asking for an adjournment for the purpose of filing the reply / objections.

[17] On coming into force of 'the Code' vide notification dated 1.6.2016, the Central Government in exercise of powers conferred by Sub-Section (1) of Section 419 of the Companies Act constituted different Benches assigning them territorial jurisdiction of the Bench of one or more States. So on and from 1.6.2016, NCLT, Ahmedabad Bench had territorial jurisdiction over two States i.e. State of Gujarat as also State of Madhya Pradesh. Therefore, since 1.6.2016, the territorial jurisdiction of State of Madhya Pradesh was also with NCLT, Ahmedabad Bench at least till 18.3.2019 whereby, NCLT, Indore Bench, came to be constituted assigning territorial jurisdiction of State of Madhya Pradesh and removing the same from the territorial jurisdiction limit from Ahmedabad Bench. However, on and from constitution of NCLT, Indore Bench, as it has not been brought to the notice contrary, was never functional or operational the territorial jurisdiction of State of Madhya Pradesh again assigned to Ahmedabad Bench of NCLT vide Notification dated 31.1.2020. Thus, initiation of proceedings by filing at NCLT, Ahmedabad Bench on 18.3.2019 by no stretch of imagination can be said to be wrongly or invalidly initiated. Since NCLT, Indore Bench, though constituted, was never functional or operational, NCLAT had to pass orders in appeal before it assigning NCLT Bench at Ahmedabad to exercise and discharge powers and functions of Tribunal for the matters pertaining to territorial jurisdiction of Indore Bench. On the basis of orders passed by Appellate Tribunal, the Registrar, NCLT, New Delhi, published an order dated 15.10.2019 assigning NCLT, Indore Bench at Ahmedabad to be presided over by Presiding Officer named therein directing Bench to sit on every Thursday and Friday till further orders. Possibly, based on that order dated 15.10.2019, which is referred to in the earlier round of litigation by this Court in Special Civil Application No.15841 of 2019, petitioner has agreed the proceedings to be conducted before the NCLT Bench at Ahmedabad. It would be pertinent to note that on initiation of proceedings by the Respondent No.1 herein on 18.3.2019, for the first time, NCLT, Ahmedabad Bench vide order dated 24.4.2019 issued notice upon the petitioner and then matter was ordered to be listed on 4.7.2019. Though, thereafter, on two earlier occasions i.e. 4.7.2019 and 28.8.2019, the petitioner appeared and sought for time to file reply/ objections and which was granted by the adjudicating authority by awarding cost, the petitioner had challenged the proceedings initiated before Ahmedabad Bench of NCLT by filing Special Civil Application No.15814 of 2019 which appears to have been filed on 18.9.2019 praying therein that, NCLT, Ahmedabad Bench lacks territorial jurisdiction and prayed that for quashing of the orders dated 4.7.2019 and 28.8.2019 as also order dated 20.9.2019 perhaps by way of amendment.

[18] Though order by the High Court in earlier round of litigation was with the consensus of the parties including the petitioner, without adverting to the issue of functionalization and/or operationalization of NCLT, Indore Bench, the petitioner agreed to de-novo proceedings afresh. Therefore, the High Court directed both the parties to appear before the adjudicating authority on a particular date. As noticed earlier, even on proceedings directed to be conducted de-novo afresh, the petitioner has never claimed that fresh notice is required to be issued under Rule 37 of NCLT Rules nor insisted for re-presentation or re-filing of the proceedings before the 'Adjudicating Authority'. It is only after he exhausted his time to file reply/ objections to the proceedings and 'Adjudicating Authority' generously granted it, but on last occasion when cost was ordered, the petitioner had come out with IA No.63/2020 praying for recalling the earlier orders where he sought for time to file reply / objections to the proceedings and issuance of fresh notice under Rule 37 of NCLT Rules. The said attempt on the part of the petitioner, if not condemnable can never be approved, that too, in these proceedings, under Articles 226 and/or 227 of the Constitution of India.

[19] At the cost of repetition, even on constitution of NCLT, Indore Bench, when it was never claimed to be functional or operational by the petitioner till the said jurisdiction assigned to the Ahmedabad Bench of NCLT, the petitioner cannot raise any grievance that the proceedings were initiated in a wrong forum or in a forum which does not have territorial jurisdiction. Therefore, it is nothing but a lame excuse by the petitioner with a view to further delay the proceedings and avoid commencement of Corporate Insolvency Resolution Process against him and therefore, it cannot be entertained so lightly as claimed by the petitioner.

[20] At the same time, the grievance raised with regard to issuance of fresh notice under Rule 37 of the NCLT Rules by filing IA No.63/2020 on the ground of quashing of orders passed by the 'Adjudicating Authority' prior to 15.10.2019 and direction to start afresh denovo, also cannot be raised subsequently when the High Court had directed the parties to appear before the 'Adjudicating Authority' on specified date. On that day and subsequent thereto and on other two occasions atleast, no such request was ever made by the petitioner. On the contrary, the petitioner requested for time to file reply to the application preferred by Respondent No.1. The said action of petitioner can be termed as waiver of requirement of the fresh notice, if at all it is presumed to be there, by its conduct. At any rate, purpose for issuance of notice under Rule 37 is to bring to the notice of a party of a proceedings initiated against it before the 'Adjudicating Authority'. As such, neither in the I.A.No.63/2020 nor on any other occasion, petitioner ever thought of requesting 'Adjudicating Authority' of a requirement, if at all it is there, of re-presenting (re-filing) the proceedings before it. Thus petitioner appears, never

requested for issuance of fresh notice, on the contrary prayed for time to file reply, and therefore, the petitioner cannot complain about the same even if it is required.

[21] The grievance that the Respondent No.1 should re-present (re-file) the proceedings before the present 'Adjudicating Authority' appears to have occurred to the petitioner only on filing of a petition before this Court, that too, on coming to know about a notification dated 24.3.2020 whereby, minimum threshold limit of default under a proviso to Section 4 of 'the Code' notified to be Rs.1 crore. Therefore, an apt petitioner now insists that when this Court in earlier round of litigation directed denovo proceedings to be conducted, the Respondent No.1 is required to re-present (re-file) the proceedings before the 'Adjudicating Authority' so that Respondent No.1 be deprived of the remedy which is already invoked by it under 'the Code' to go for any other remedy under the Civil Law. However, by the conduct and acquiescence of the petitioner and waiver of the requirement of fresh notice as also of re-presenting (re-filing) by it, proceedings can be said to be validly instituted if not on 18.3.2019, not on 12.12.2019, but it can certainly be said to be validly instituted at-least on 31.1.2020, the day on which the petitioner agreed before this Court submitting to the jurisdiction of present 'Adjudicating Authority'. In my opinion, the requirement, as it is argued now, of re-presenting (re-filing) proceedings did not arise at all because of the conduct and the submission to the proceedings with a request to grant time not once but on number of occasions to file reply/ objection to the proceedings initiated on and from 12.12.2019 till the arguments conducted before this Court. The requirement of re-presenting (re-filing) the proceedings before the 'Adjudicating Authority' by the Respondent No.1 is never pressed into service before the 'Adjudicating Authority'. However, if at all, there was any such requirement, petitioner should have objected to the same on and from 12.12.2019. On the contrary, the said submission which is now raised is a mere formality as that would have been raised on the first date when both the parties were asked to appear before the 'Adjudicating Authority' it would have been proper. Once, issuance of notice afresh under Rule 37 of the NCLT Rules and re-presenting (re-filing) proceedings before it, is waived, if not expressly, by their conduct, the proceedings can be said to be validly instituted on 12.12.2019 and if not on that day at-least on 31.1.2020. Pursuant to an order passed by this Court dated 10.12.2019 in an earlier round of litigation, when proceedings before the 'Adjudicating Authority' is numbered, though may be incorrectly as Transfer Petition being TP/MP/19/2019, it can be said to have been represented / re-filed on 12.12.2019 itself, that too, without any objection thereto of re-presenting (re-filing). Therefore, nothing much turns on minimum threshold limit of default of Rs.1 crore as notified under a proviso to Section 4 of 'the Code', vide Notification dated 24.03.2020.

[22] The reliance placed on a decision of **Harshad Chimanlal Modi (Supra)** is not of any help to the petitioner as it was pertaining to a prayer made by the applicant therein to direct the Court of territorial jurisdiction on return of the suit to proceed from the stage at which it was in Delhi Court where such prayer cannot be permitted from the stage at which it stood in the wrong Court since proceedings were void-ab-initio. It is clear that in the aforesaid decision, the application was filed by the defendant under Order 6 Rule 17 of the Civil Procedure Code seeking an amendment in the written statement by raising an objection as to jurisdiction of the Court. It was contended that suit was for recovery of immovable property situated at Gurgaon district. Under Section 16 of the Code of Civil Procedure, suit could only be instituted within local limits of whose jurisdiction the property was situated. Here, in the present case, present 'Adjudicating Authority' did not lack even territorial jurisdiction as, on and from constitution of Indore Bench, it was never functional or operational and therefore, an order dated 15.10.2019 of Registrar, order dated 10.12.2019 of this Court in earlier round of litigation and a Notification dated 31.1.2020 assigning jurisdiction of State of Madhya Pradesh to be exercised by Ahmedbaad Bench of NCLT.

[23] More particularly, looking at the definition 5 (1) of 'the Code' which defines 'Adjudicating Authority', means the NCLT constituted under Section 408 of the Companies Act. Pursuant thereto, NCLT is constituted at Delhi but in view of Section 419 of the Companies Act, the Central Government is empowered to constitute such number of Benches of Tribunal by notification, under it Benches of the Tribunal came to be constituted assigning them territory of one or more States. Different Benches are constituted at different places so as to facilitate litigant from a particular area for the dispute concerning the same.

[24] The decision in the case of **Mohannakumaran Nair (Supra)** is also not of any help to the petitioner as in that case the day on which suit came to be filed, the defendant, under a residual provision under Section 20 of the Code of Civil Procedure was not residing within the jurisdiction of the Court but however, subsequently defendant started residing in the said jurisdiction. Therefore, the Court said that for the institution of a suit based on residence of respondent under Section 20 of the Code cause of action arises and therefore change of resident subsequent to the institution of a suit would not confer territorial jurisdiction in the Court, which it did not have. However, in that case also, on being summoned by the Court of wrong territorial jurisdiction, he raised an issue of lack of territorial jurisdiction on the part of the said Court to entertain the suit. In the present case, not only the petitioner has not objected to territorial jurisdiction of the 'Adjudicating Authority', on the contrary, he has submitted to the jurisdiction thereof and when petition was filed objecting the same in earlier round of litigation in view of order dated 15.10.2019 of Registrar, NCLT

to proceed before the same 'Adjudicating Authority' therefore, now he cannot be heard to say that the present 'Adjudicating Authority' lacks territorial jurisdiction and there is no proper institution of proceedings before it.

[25] Decision relied on by the petitioner in the case of **Kanwar Singh Saini (supra)**, there is no denying to the proposition determined in it. The Supreme Court in the said case was concerned with the inherent lack of jurisdiction and not the territorial jurisdiction. In the said case, the appellant before it sought to be proceeded under Order 39 Rule 2-A by an independent proceedings after suit stood decreed for breach of injunction. The Court dealing with the same recorded that the appellant had taken inconsistent pleas, wrong statement filed earlier and valid undertaking while making his oral statement, a case of contempt was made out and referred the matter to the High Court to be dealt with under the Contempt of Courts Act, 1971. The High Court held appellant guilty of contempt on the basis of inconsistent pleas taken by him and also on the breach on undertaking and imposed simple imprisonment for 4 months. However, the Supreme Court has said that initiation of a proceedings of contempt under Order 39 Rule 2A of CPC was not maintainable as the suit was decreed and the interim order, the breach of which is alleged, merged into the final decree and therefore, the Supreme Court has said that since the application under Order 39 Rule 2-A itself was not maintainable and subsequent proceedings remain inconsequential and therefore, it was held that foundation being removed structure fails and again, because of inherent lack of jurisdiction and not the lack of territorial jurisdiction.

[26] Reliance is placed on decision in the case of **Chairman - cum - Managing Director, Coal India Limited and other (supra)** wherein, disciplinary proceedings conducted against the respondent therein by an authority which lacks jurisdiction the court directed denovo proceedings to be conducted before an authority who is having inherent jurisdiction to initiate disciplinary proceedings against delinquent. Since before the disciplinary authority having jurisdiction to deal with the delinquent relied on charge-sheet issued by earlier disciplinary authority which had no jurisdiction to initiate the disciplinary proceedings, the authority having jurisdiction to deal with the delinquent has to issue charge-sheet. Relying on the said decision, it was submitted that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. However, action initiated against the petitioner under 'the Code' is in consonance with law and therefore, the said decision is also not applicable. In the said case, fresh inquiry without giving fresh charge-sheet was not permitted only because the charge-sheet which was issued earlier and departmental proceedings conducted by an officer of subsidiary company in contravention of statutory rules, who lacked inherent jurisdiction to proceed against the delinquent, therefore, it was held that Disciplinary Authority having inherent jurisdiction to deal with the delinquent has to

issue charge-sheet and he cannot use the charge-sheet issued earlier by incompetent authority to proceed against the delinquent departmentally. However, in the present case, there is not an issue of inherent lack of jurisdiction in filing the proceedings. It is only an issue of lack of territorial jurisdiction, if at all it is to be considered. Therefore, submission to the territorial jurisdiction of the present 'Adjudicating Authority' and not objecting to the non-issuance of a fresh notice under Rule 37 of the NCLT Rules nor asking Respondent No.1 herein to re-present (re-file) proceedings before it, on order passed by this Court in earlier round of litigation, can be said to have been waived by the petitioner by his conscious conduct praying time for filing reply / objection to the proceedings initiated against it. Therefore, petitioner cannot be heard to say, that too, at this belated stage on the formal requirement of re-presenting (re-filing) proceedings before the 'Adjudicating Authority' as proceedings have been initiated validly without objection rather with the tacit consent of the petitioner if not on 12.12.2019, not on 15.10.2019, but certainly on 31.1.2020. At any rate, at the cost of repetition, since 8.3.2019 till 31.1.2020, constitution of Indore Bench and again assigning territorial jurisdiction to NCLT, Ahmedabad, NCLT Indore Bench was neither functional nor operational.

[27] Learned counsel for the Respondent No.1 is right in his submission that issuance of fresh notice which is prayed for in an I.A. No.63/2020 is a question of procedure only. The requirement of issuance of notice, is to bring to the notice of the party, of the proceedings filed against it. When the petitioner was aware of the proceedings initiated and did not ask the 'Adjudicating Authority' for issuance of fresh notice on denovo proceedings, it can validly presumed to be waived. Here attempts of the petitioner are not of an honest litigant. Petitioner may be within his right to raise all possible legal / factual issues. He cannot on one hand submit to the territorial jurisdiction of an authority without asking the 'Adjudicating Authority' for a fresh notice or objection to requirement of re-presenting (re-filing) of the proceeding on that day i.e. 12.12.2019 till arguments started here in this Court, went on praying time for reply not once but on many occasions and then making grievance about non issuance of notice on denovo proceedings. The attempt appears to delay the proceedings which is against the very purpose of 'the Code'.

[28] At the first instance, if according to the petitioner, 'Adjudicating Authority' could not have continued proceedings from where it left, on an order passed by High Court denovo afresh proceedings, if at all procedure adopted by the 'Adjudicating Authority' is erroneous, petitioner could not have asked for adjournment / time for filing reply/ objections to the proceedings. At any rate, after 3 adjournments sought for and granted for the same reason, petitioner could not have complained about it. Though on 8.3.2019, the Central Government constituted Indore Bench of NCLT for the jurisdiction

of State of Madhya Pradesh, till the fresh notification issued dated 31.1.2020 assigning again the territorial jurisdiction for State of Madhya Pradesh to the NCLT, Ahmedabad Bench, it is not the case of petitioner or anyone else that Indore Bench, at Indore, was ever functional or operational. Therefore, the NCLAT had to pass orders to assign work to NCLT, Ahmedabad as Indore Bench. It is more clear from the notification dated 31.1.2020 that jurisdiction is conferred on Ahmedabad Bench, till the operationalization of Indore Bench to be notified by a notification.

[29] Petitioner himself, on this very ground challenged the proceedings before this Court earlier but had to agree on consensus to proceed with the same before Special Bench as described by this Court at Ahmedabad, in view of order dated 15.10.2019 of the Registrar, NCLT.

[30] If the Indore Bench at Indore, though constituted was never functional or operational, proceedings filed before the forum which had a territorial jurisdiction for long years prior to 8.3.2019 and continued the proceedings to the very forum, may be by different title or nomenclature or different number, it has again conferred with the very forum by notification dated 31.1.2020. Therefore, there is no illegality or irregularity in proceeding against the petitioner.

[31] To appreciate submission made with regard to error of procedure adopted by the adjudicating authority and consequent lack of jurisdiction requires to be appreciated in the facts of the present case. The submission is that IA No.63/2020 filed for recalling of ex-parte disposal of it without assigning any reasons is uncalled for. If the petitioner failed to appear before the authority on that day, may be had some explanation for non appearance, it could have been dismissed for non prosecution if the adjudicating authority felt that the petitioner is delaying proceedings before it. Drawing attention of the Court to para 3.10 of the petition, again it is submitted that pendency of two Interlocutory Applications, one praying for recalling of order by which IA No.63/2020 came to be disposed of as also an order conducting proceedings ex-parte against the petitioner, it is submitted that pendency of those applications were brought to the attention of the adjudicating authority and despite that, adjudicating authority directed the petitioner to file its reply and consequently, adjourned the proceedings on 11.9.2020 for hearing.

[32] From the record of the case, it appears that, IA 63/2020 praying for recalling of orders dated 12.12.2019, 16.1.2020 and 21.2.2020 and issuance of fresh notice upon the applicant in the captioned petition under Rule 37 of the NCLT Rules, claimed to be affirmed on 17.3.2020. However, the petitioner has not disclosed that when the said IA came to be filed before the adjudicating authority. Though, nothing much turns on it, it is clear that, the petitioner has conveniently not placed on record of this petition an

order dated 18.6.2020 passed by the adjudicating authority. However, learned advocate for the Respondent No.1 after having furnished the copy of the same to the learned advocate for the petitioner, it is clear that, on that day, IA No.63/2020, was placed on Board for hearing. Conspicuously, neither the petitioner nor his advocate appeared before the adjudicating authority. Therefore, adjudicating authority was constrained to direct the parties to appear before that Bench and notice was issued to the corporate debtor i.e. petitioner herein. As such, the hearing to the same was adjourned for further consideration on 7.8.2020. It appears that on 18.6.2020, the IA No.63/2020 filed by the petitioner was for hearing on that day and after issuance of notice directing the parties to appear before the Bench on 7.8.2020. However, main proceedings being TP/MP/19/2019 [CP(IB)260/2019] was on Board for hearing on 9.7.2020. On that day also, conspicuously, neither the petitioner nor his advocate remained present before the adjudicating authority. It is pertinent to note that so far as absence of either petitioner or his advocate, there is no explanation offered either oral or in writing for those two dates, namely, 18.6.2020 and 9.7.2020. However, adjudicating authority had adjourned the main matter also on 27.8.2020.

[33] Since IA No.63/2020 came to be adjourned on 7.8.2020 for the absence of learned advocate for the petitioner or the petitioner himself before 'Adjudicating Authority' on 18.6.2020, though, affirmed on 17.3.2020, came to be adjourned on that day, petitioner has come out with an explanation that on 7.8.2020, his advocate attempted to log in, his request to join in from the waiting room was denied by the host and therefore, petitioner could not appear. Though, there is no explanation at all or no excuse shown for remaining absent on 18.6.2020 and 9.7.2020 as there was no any effective order came to be passed on those dates. However, for 7.8.2020 ther is an explanation offered by way of E-mail sent to the NCLT that host has not joined him for hearing. As such, on 7.8.2020, as recorded in the order, no one appeared for corporate debtor i.e. petitioner herein in spite of the notice and therefore, matter was ordered to proceed ex-parte hearing. In view of the said order, the adjudicating authority disposed of IA No.63/2020 as it was praying for notice under Rule 37 of the NCLT Rules after recalling orders dated 12.12.2019, 16.1.2020 and 21.2.2020. However, fact remains that the adjudicating authority directed the parties to appear before that Bench (perhaps the Presiding Officers of the Bench were changed), therefore, notice was issued to the corporate debtor. Thus, though parties were directed to remain present before the Bench and notice came to be issued upon the corporate debtor i.e. petitioner, despite that none appeared for petitioner though served, I.A.No.63/2020 came to be disposed of as it was requested in it to issue notice under Rule 37 of the NCLT Rules after recalling of three (3) earlier orders.

[34] Even the grievance raised through E-mail dated 7.8.2020 not permitting entry for hearing by the host appears to be not genuine. A prudent petitioner after checking up the order online would have immediately moved an application for even recalling of an order dated 7.8.2020 whereby, IA No.63/2020 came to be disposed of. However, a day prior to next hearing date, to be 27.8.2020, two different Interlocutory Applications came to be filed; one praying for recalling of ex-parte order dated 7.8.2020 whereby, IA No.63/2020 came to be disposed of and another praying for recalling of an order dated 7.8.2020 whereby, the adjudicating authority directed the matter to proceed ex-parte hearing. As such, vide an order dated 9.7.2020, observing that despite sufficient opportunities, corporate debtor i.e. petitioner neither appeared nor filed affidavit in-reply and hence, the matter proceeded ex-parte hearing against the corporate debtor. Therefore, prima-facie, it appears that petitioner attempts to delay the commencement of Corporate Insolvency Resolution Process though more than a year and half has passed to the filing of the proceedings, the adjudicating authority has yet not concluded that default has or has not occurred by the corporate debtor for the purpose of commencement of Corporate Insolvency Resolution Process.

[35] As such, from the conduct as also convenient following up of the proceedings has led to a conclusion that there is no error of even procedure as claimed by the petitioner in this petition. As such, when the High Court in the earlier round of litigation directed the parties to appear on 12.12.2019 for de-novo proceedings afresh, there is no requirement of issuance of fresh notice again under Rule 37 of the NCLT Rules more particularly when it was not requested for on that day or till two adjournments thereafter, instead sought time to file reply / objection. The purpose of issuing notice under Rule 37 of the NCLT Rules, is to bring to the notice of the filing of the proceeding against the corporate debtor under Section 7 of 'the Code'. The notice petitioner already had since the time the proceedings were initiated against him and though de-novo proceedings were ordered to be conducted, the Court had directed both the parties to appear before the adjudicating authority on 12.12.2019. On that day and for nearly two subsequent adjourned dates, the petitioner himself through his lawyer asked for adjournment for filing reply. Therefore, if at all, there was any necessity of issuing fresh notice under Rule 37 of the NCLT Rules, it can be held to be waived by the petitioner by his own action on that day i.e. 12.12.2019. Not only that, despite time was granted, again the petitioner sought for an adjournment on 16.1.2020 which was again granted by the 'Adjudicating Authority'. Despite that, again on 21.2.2020, the petitioner sought for time for filing reply which again came to be granted but with a cost of Rs.20,000/-. Thus, not once but thrice the petitioner had asked for time to file to the reply/ objections to the proceedings. Thus, even if, fresh notice is required to be issued under Rule 37 of the NCLT Rules, when party was already directed to appear before the adjudicating authority and had asked for time to file reply / objections to

the proceedings, it can safely be concluded that it had been waived by the party by his own action.

[36] Much stress is laid by the petitioner on the ground that when proceedings were directed to be conducted de-novo afresh, that too, by Special Bench of NCLT, as named therein, it should be by way of fresh presentation or by re-filing of the proceedings under Section 7 of 'the Code'. Not only that, it is submitted that when the proceedings were numbered as TP (Transfer Petition) No.19/2019 and in the title it is written that before the 'Adjudicating Authority', NCLT, Indore Bench at Ahmedabad, it cannot be continued. As such, when vide Notification dated 31.1.2020, jurisdiction of State of Madhya Pradesh, said to be exercised by Ahmedabad Bench of NCLT, continued the proceedings by Transfer Petition No.19/2019 and/or proceedings before NCLT, Indore Bench at Ahmedabad, can be said to be validly instituted. As such, on a direction by the High Court in earlier round of litigation to Special Bench of NCLT, pursuant to an order of Registrar, NCLT, as recorded in the order passed in Special Civil Application No.15814 of 2019, even if it is numbered as Transfer Petition or transfer proceedings, rightly or wrongly or said to be Indore Bench at Ahmedabad of NCLT when proceedings were sent back to conduct de novo afresh with a direction to the parties to appear before the 'Adjudicating Authority', it can safely be said to have been instituted, if not on the date of presentation i.e. 18.3.2019 or if not on 31.1.2020 assigning jurisdiction of State of Madhya Pradesh to the NCLT, Ahmedabad Bench vide Notification dated 31.1.2020, it can be said to have been validly instituted apart from nomenclature of Transfer Petition and/or Indore Bench at Ahmedabad. Over and above that, said excuse and/or objection has never been raised before the adjudicating authority and on the contrary, without any such objection, time to file reply/ objection to the proceedings were asked for and sufficiently granted by the adjudicating authority. As such, the issue of fresh initiation of proceedings was never requested before the adjudicating authority nor before this High Court in an earlier round of litigation vide Special Civil Application No.15814 of 2019, when Court directed both the parties to remain present before the adjudicating authority. If at all, the petitioner contemplated that it should be by way of fresh filing / presentation of the proceedings or re-filing of the proceedings on that very date, it should have been requested by the petitioner. If prayers made in IA No.63/2020, is seen, it only prays for re-calling of the orders whereby, the petitioner asked for time to file reply/ objections and issuance of notice under Rule 37 of the NCLT Rules. As such, at no stage, petitioner has ever objected to the continuance of the proceedings without re-presenting (re-filing) the application under Section 7. It appears to have occurred to the petitioner subsequent to the petition filed before this Court when it had come to the notice of the petitioner and therefore, by way of draft amendment, a notification dated 24.3.2020 published in exercise of powers conferred by proviso of Section 4 of 'the Code', a minimum threshold default limit of Rs.1 crore is

notified. Therefore, by way of draft amendment, said notification is placed on record and a submission is made that it was not validly instituted to shut out the proceedings filed by the respondent No.1 herein under the provisions of the Code. Thus, it is nothing but an attempt by the petitioner to defeat the rightful claim of Respondent No.1 herein to invoke the provisions of 'the Code' against him.

[37] The argument by the learned advocate for the petitioner that since no orders are passed on merit either on the IA No.63/2020 and no cognizance is yet taken of other two IAs i.e. IA Nos.120/2020 and 121/2020, this Court should direct the adjudicating authority to decide the same. As noticed earlier, after filing of each IA's petitioner has not even bothered to request the 'Adjudicating Authority' to hear the same, orally or in writing, though counsel of the petitioner asked for adjournment orally, which is recorded in orders, for submitting reply/ objection. However, as held earlier, these are attempts with a view to further delay the proceedings initiated and even the adjudicating authority was never requested to take up the hearing of those applications despite ample opportunity to him, the said submission is required to be rejected outright.

[38] Hence, I see no reason to interfere in this petition and therefore, this petition is rejected. Notice discharged.