

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT No. - I**

C.A. No. 270 of 2021

in

COMPANY PETITION NO. 4127 OF 2019

**IN THE MATTER OF**

**UNION OF INDIA**

**... Applicant/Org. Petitioner**

**Versus**

**CG POWER AND INDUSTRIAL SOLUTIONS LIMITED**

**... Respondent**

**IN THE MATTER OF**

**UNION OF INDIA**

**... Applicant/Org. Petitioner**

**Versus**

**CG POWER AND INDUSTRIAL SOLUTIONS LIMITED & ORS.**

**... Respondents**

**Order Pronounced on: 26.10.2021**

**CORAM.**

**Sh. Bhaskara Pantula Mohan, Hon'ble Acting President**

**Sh. Narendra Kumar Bhola, Hon'ble Member (T)**



**PRESENT:**

**For the Applicant/  
Petitioner:** **Org.** Mr. Sanjay Shorey, Director  
(L&P), MCA

**For the Respondent:** Mr. Adarsh Saxena with Ms.  
Drishti Das, Ms. Sonu Bhasi,  
Mr. Varun Srinivasan (Cyril  
Amarchand Mangaldas

**For the Intervenors:** Mr. JJ Bhatt, Sr. Adv., Mr.  
Vikram Nankani, Sr. Adv.  
with Ms. Sabeena Mahadik,  
Ms. Sneha Jaisingh, Mr.  
Ranjeev Carvalho

**Per: Bhaskara Pantula Mohan, Acting President**

1. By an order dated 05/03/2020 ("**March 5 Order**") in C.P. No. 4127 of 2019, ("**original Company Petition**") this Tribunal had granted the following reliefs as prayed for in the captioned Petition:
  - a. permit the re-opening of the books of account and recasting of financial statements of the Respondent and its subsidiary companies for the past 5 financial years (i.e., till the F.Y. ended 2019); and
  - b. to permit the Central Government to appoint the requisite accountants to conduct the recasting exercise.



The original Company Petition was filed by the Union of India, Ministry of Corporate Affairs.

2. The present Company Application has been filed by the Petitioner to take on record the recast/ restated financial statements of the Respondent and its subsidiaries.
3. The Applicant/ Petitioner submitted that M/s Kalyaniwalla & Mistry LLP was appointed by the Applicant/ Petitioner to re-open and re-cast the books of accounts of the Respondent and its subsidiaries for the period of 5 (five) years as ended on 31/03/2019 *vide* an appointment letter dated 01/02/2021. Similarly, M/s CNK Associates LLP was appointed by the Applicant/ Petitioner to audit the re-casted books of accounts of the Respondent and its subsidiaries for the period of 5 (five) years as ended on 31/03/2019 *vide* an appointment letter dated 01/02/2021.
4. The Applicant/ Petitioner submitted that the above Chartered Accountant firms have completed the re-opening, recasting and audit of the re-casted financial statements of the Respondent and have furnished the



restated accounts for the financial years 2014-2015 to 2018-2019 duly audited. Copies of the restated standalone and consolidated financial statements of the Respondent for the financial years 2014-2015 to 2018-2019 along with the relevant audit reports have also been submitted. Copies of the restated financial statements of the various subsidiaries of the Respondent for the relevant financial years have also been submitted.

5. The Applicant/ Petitioner submitted that the subsidiaries of the Respondent in respect of which restated financial statements have been submitted by the Respondent are as follows:

Name of Subsidiary	Financial Years
CG-PPI Adhesive Products Limited	2014-15 to 2018-2019
CG Power Solutions Limited	2014-15 to 2018-2019
CG Power Equipments Limited	2014-15 to 2018-2019



Crompton Greaves Consumer Electricals Limited	2014-15
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6. It is stated that Crompton Greaves Consumer Electricals Limited ceased to be subsidiary of the Respondent from Financial Year 2015-16 onwards.
7. The Applicant/ Petitioner submitted that the restated standalone and consolidated financial statements of the Respondent as well as the restated financial statements of the various subsidiaries of the Respondent have been signed by the respective authorized signatories of the Respondent and the respective subsidiaries. Neither the Respondent nor any of the said Indian subsidiaries has raised or communicated any objection to the said restated financial statements.
8. In view of the above, the Applicant/Petitioner has submitted that the restated standalone and consolidated financial statements of the Respondent as well as the restated financial statements of the various subsidiaries of



the Respondent may be taken on record by this Hon'ble Tribunal so that the same can be treated as final under Section 130(2) of the Companies Act, 2013.

9. When the Application came up for hearing on the first date, certain parties, being persons who were part of the earlier management of the Respondent ("**Intervenors**"), have sought to intervene at this stage and object to the taking on record of the accounts on the grounds that:
  - a. the principles of natural justice in terms of Section 424(1) of the Act require that the Intervenors be heard before the recast financial statements are taken on record; and
  - b. as per the March 5 Order passed by this Tribunal, the recast financial statements can only be taken on record after an independent investigation by a government agency is complete. Since such independent investigation is not yet complete, the recast financial statements cannot be taken on record.
10. On behalf of Respondent Nos. 2 and 13 to the original Company Petition submission has been made that these



parties were impleaded as respondents in the original Company Petition and since the present Application is taken out in the original Company Petition, they are entitled to a copy of the same as per Section 420(1) of the Act and Rule 37(1) of the National Company Law Tribunal Rules, 2016 ("**Rules**"). It is further submitted that even otherwise, in consonance with the principles of natural justice, these parties are entitled to copies of the proceedings and equally to be heard.

11. Furthermore, it was submitted on behalf of Respondent No. 12 to the original Company Petition that since it was a party to the Company Petition and continues to be a party to the Company Petition as a proper and necessary party. It is further submitted that the March 5 Order was passed after hearing its submissions. Since it was a party to the main Company Petition, it cannot be deleted from the array of parties in the present Application.
12. Before advertng to the submissions made by the Ld. Sr. Counsels for the Intervenors, it is relevant to examine the scheme and construct of Section 130 of the Companies Act, 2013.



13. Section 130 of the Act reads as under:

**“130. Re-opening of Accounts on Court’s or Tribunal’s Orders**

- (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
- i. the relevant earlier accounts were prepared in a fraudulent manner; or
  - ii. the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

*Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned or the other person concerned before passing any order under this section.*

- (2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

[...].”

(emphasis added)

14. We note from the above that under the scheme of Section 130 of the Act, an order under Section 130(1) is a substantive order. Before passing such an order, this Tribunal has to arrive at the satisfaction that there is sufficient doubt as to the reliability of the financial



statements and books of accounts sought to be reopened or if the same were prepared in a fraudulent manner. It is noted as such that an opportunity of making a representation is given to statutory authorities as well as "any other person concerned" at the stage prior to passing an order directing re-opening of accounts and recasting of financial statements under this provision. After hearing the statutory authorities and concerned persons, once this Tribunal has come to the conclusion that the earlier accounts/ financial statements are not reliable and hence need to be recast upon an examination of the facts and circumstances in light of the conditions in Section 130(1), it will follow that the recast accounts/ financial statements must replace the earlier accounts/ financial statements.

15. In the present case, the aforesaid burden – both on the question of reliability of the financial statements of the Respondent, as well as of providing the concerned parties with an opportunity to be heard – was discharged at the stage of passing of the March 5 Order, when all concerned, including the Intervenors herein, were heard and their

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submissions noted. We also note that the prayers in the original Company Petition were as follows:

*"In light of the facts and circumstances set out above, the Petitioner most respectfully prays for the following reliefs:*

*A. THAT this Hon'ble Tribunal be pleased to permit re-opening of the books of account and recasting of financial statements of Respondent No. 1 company - CG Power & Industrial Solutions Ltd. - and its subsidiary companies for the past 5 (Five) Financial Years viz. from Financial Year 2014-2015 to Financial Year 2018-2019;*

*B. THAT this Hon'ble Tribunal be pleased to permit the Central Government to appoint such person/firm of Chartered Accountants to re-open the books of account and recast the accounts/financial statements of Respondent No. 1 company - CG Power & Industrial Solutions Ltd. - and its subsidiary companies for the past 5 (Five) Financial Years viz. from Financial Year 2014-2015 to Financial Year 2018-2019;*

*C. For any further and such consequential reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances."*

16. As set out above, in the March 5 Order, this Tribunal had granted the reliefs as prayed for in the original Company Petition and therefore it follows that the original Company Petition stands disposed of in terms of the March 5 Order. Accordingly, no question of the Respondents to the original



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Company Petition being made party to the present Application for taking on record the re-opened and recast financial statements of the Respondent and its subsidiaries arises, and the contentions of the Intervenors in this regard are rejected.

17. We further note that the March 5 Order has not been challenged by any of the Respondents to the original Company Petition and it has therefore, attained finality. Any attempts of the Intervenors to reopen and re-agitate their contentions, which have admittedly, been heard and dealt with in the March 5 Order, is designed solely to prolong the matter.

18. The Ld. Sr. Counsels for the Intervenors have further relied on Section 420(1) of the Act which states as follows:

*"420. (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit."*

(emphasis supplied)

19. Rule 37(1) of the Rules states as follows:

*"37. (1) The Tribunal shall issue notice to the respondent to show cause against the*



*application or petition on a date of hearing to be specified in the Notice. Such notice in Form No. NCLT. 5 shall be accompanied by a copy of the application with supporting documents.”*  
(emphasis supplied)

20. From a plain reading of the aforesaid provisions, it is clear that both Section 420(1) of the Act and Rule 37(1) of the Rules contemplate notice and reasonable opportunity of hearing to be given only to the respondent and/or parties to the specific 'proceeding' that is being considered by this Tribunal. Given that reliefs as prayed for in the original Company Petition have been granted by the March 5 Order, the original Company Petition stands disposed of, and the Respondents cease to be concerned with the same.
21. Even though the present Application has been filed by the Petitioner pursuant to the March 5 Order, it is a separate proceeding to which only the Respondent is a party. The Intervenor is not a party to the present Application. In view thereof, neither Section 420 of the Act nor Rule 37 of the Rules requires the Intervenor to be heard before the recast financial statements are taken on record.

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22. Section 424(1) of the Act states as follows:

*"424. (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of the Act or of the Insolvency and Bankruptcy Code, 2016 and of any rules made thereunder, the Tribunal and Appellate Tribunal shall have power to regulate their own procedure."*

*(emphasis supplied)*

23. Section 424(1) of the Act only requires this Hon'ble Tribunal to be guided by the principles of natural justice and the power this Hon'ble Tribunal to regulate its own procedure is subject only to the provisions of the Act and the Rules. It is settled law that the rules/ principles of natural justice cannot override statutory provisions. Accordingly, if a statutory provision either expressly or by necessary implication excludes the principles of natural justice, then the same cannot be read into the said statutory provision.

24. Mr. Sanjay Shorey Ld. Director (L&P), MCA has submitted that it is a well settled that rules of natural justice do not operate in areas which are already covered by law validly

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made. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. In support, he relies on the decisions of the Hon'ble Apex Court in **Union of India v. Col. J.N. Sinha, (AIR 1971 SC 40** and **Union of India v. W.N. Chadha, AIR 1993 SC 1082.**

25. Any party which was heard before the order directing reopening of accounts and recasting of financial statements was passed will obviously maintain its objection to the recast accounts/ financial statements on grounds/ pleas that are identical to those made earlier. Having defended the earlier accounts/ financial statements, such parties cannot possibly accept that the recast accounts/ financial statement are correct. This is the reason why Section 130 of the Act does not provide for any opportunity of representation/ hearing at the time when the recast accounts are taken on record.
26. In the present case, the Intervenors were given an opportunity to make a representation and be heard before



this Tribunal passed the March 5 Order. This opportunity was given because the Intervenors were in charge of the affairs of the Respondent company and involved in preparation of the earlier accounts/ financial statements. For this reason, this Tribunal took into account their submissions before deciding whether the earlier accounts/ financial statements are reliable or not. Now that the recast accounts/ financial statements have been prepared pursuant to the March 5 Order, giving the Intervenors an opportunity of making a representation and being heard once again would serve no purpose because the Intervenors cannot deviate from their previous submissions that the earlier accounts/ financial statements are proper.

27. For the above reasons, by expressly providing for an opportunity of hearing prior to passing of an order directing reopening of accounts and recasting of financial statements and not providing for such opportunity at the time of taking the recast accounts/ financial statements on record, the scheme of Section 130 of the Act excludes the application of the principles of natural justice at the stage of taking the recast accounts/ financial statements on record. Reading



in the principles of natural justice at the latter stage will go against the purpose of Section 130 of the Act since it will mean that those who prepared the earlier accounts/ financial statements can raise the same objections at two different stages. This could never have been the objective of Section 130 of the Act. The contentions of the Intervenor in this regard are rejected.

28. Where an opportunity of hearing is clearly provided in Section 130(1), it is deliberately not provided in Section 130(2). Where the legislature has contemplated a judicial finding such as in Section 130(1), it has provided for an opportunity of hearing; whereas the absence of the same in Section 130(2) clearly indicates the legislature's intention that accounts are to be considered as automatically final. Therefore, Section 424 of the Act is of no assistance to the Intervenor's attempt to re-agitate their contentions, when no such liberty is envisaged.

29. We note that one of the Intervenor (the erstwhile Respondent No. 2 in the original Company Petition) had moved the Hon'ble Bombay High Court in Writ Petition (L)



No. 21968 of 2021, praying for a writ of certiorari even before this Tribunal had rendered a finding on this issue. This writ petition was disposed of by the Hon'ble Bombay High Court *vide* order dated September 29, 2021 expressing the hope and trust that this Tribunal will pass orders in accordance with the provisions of Act and the Rules. The issue as to why the Act and the Rules do not require the Intervenors' to be heard at this stage has already been dealt with above.

30. Under Section 130(1) of the Act, an order directing re-opening of accounts and recasting of financial statements can be passed when:
- a. the relevant accounts were prepared in a fraudulent manner; or
  - b. the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
31. The fact that this Tribunal allowed the original Company Petition by passing the March 5 Order means that this Tribunal was satisfied about the existence of the above



condition(s). Further, a perusal of the March 5 Order demonstrates the view of this Tribunal that investigation by an independent government agency is necessary in order to find out the persons responsible so that suitable action can be taken against them. Accordingly, when this Tribunal directed that the report of the investigation agency should also be submitted to this Tribunal, it was for the purpose of ensuring that suitable action is taken against the persons responsible and not for the purpose of taking the recast accounts/ financial statements on record.

32. In this proceeding, this Tribunal is only concerned with taking on record the recast accounts. The present Application states that the Respondent company whose accounts/ financial statements have been recast has no objection to the same being taken on record. Counsel for the Respondent company has also submitted that there is no objection and has supported the prayer made by the Petitioner in the present Application. It is also not in dispute that the Intervenor are no longer associated with the Respondent company in any way. The Intervenor's apprehension is that the recast accounts/financial



statements may be used against them in various proceedings.

33. In this proceeding, this Tribunal is not concerned with what action should be taken against the persons responsible for not having prepared the earlier accounts/ financial statements properly. When we posed a query to Mr. Sanjay Shorey Ld. Director (L&P), MCA about the timeline by when the investigation is likely to be completed, he informed us that the investigation is being conducted by SFIO and he cannot say about the timeline for completion of the same. In the circumstances, since the recast accounts/ financial statements are ready, the taking on record of the same cannot be delayed for an indefinite period of time. There can be no question of any prejudice being caused to the Intervenors if the recast accounts/ financial statements are taken on record since they can always exercise appropriate remedies as per law and take whatever defences are available to them if the recast accounts/financial statements are sought to be relied upon in any proceedings against them.

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34. In light of the foregoing observations, we find no merit in the submissions made by the Intervenors, and the same are liable to be rejected. In light of the finding that the Intervenors have no locus to be heard to the taking on record of the re-opened and recast financial statements of the Respondent and its subsidiaries, and since it is a mandate under Section 130(2) that the financial statements and books of accounts re-opened and recast as per an order under Section 130(1) shall be final, we see no need to advert to the objections of the Intervenors on the merits of the re-opened and recast financial statements and books of accounts carried out as per the mandate of this Tribunal *vide* the March 5 Order.

35. We have noted that there is no objection by the Respondent, which is the only party concerned with the present Application, to the restated financial statements which have been filed by the Applicant/ Petitioner before this Tribunal. It is noted that any delay in taking on record the recast accounts/ financial statements will cause severe prejudice to the Respondent since it is a public listed company, and the statutory auditors continue to disclaim



the accounts/ financial statements even for subsequent years till the time the recast accounts/ financial statements are taken on record. The Respondent is now under a completely new management that has taken over the company in November 2020 and has nothing whatsoever to do with either of the two groups referred to in the March 5 Order.

**ORDER**

36. Accordingly, we order the following restated financial statements to be taken on record under Section 130 of the Companies Act, 2013 so that the same may be treated as final:
- a. restated standalone and consolidated financial statements of **CG Power and Industrial Solutions Limited** for the financial years from Financial Year 2014-2015 to Financial Year 2018-2019;
  - b. restated financial statements of **CG-PPI Adhesive Products Limited, CG Power Solutions Limited and CG Power Equipments Limited** for the financial years from Financial Year 2014-2015 to Financial Year 2018-2019; and

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c. restated financial statements of **Crompton Greaves Consumer Electricals Limited** for the Financial Year 2014-2015.

37. The jurisdictional Registrar of Companies of each of the aforesaid companies are directed to take the above restated financial statements on record. The respective companies are also directed to make the above restated financial statements available on their respective websites along with a copy of this order.

No order as to costs.

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**BHASKARA PANTULA MOHAN**

**(ACTING PRESIDENT)**

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**NARENDRA KUMAR BHOLA**

**(MEMBER TECHNICAL)**

Certified True Copy

Copy Issued "free of cost"

On 29/10/2024

*R. S. Srinivasan*  
Deputy Registrar

National Company Law Tribunal Mumbai Bench  
Government of India

