(2021) 07 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8257, 11233, 12125 Of 2021

Ideal Surgicals Njarackal House, Priyadarshini Nagar, Konthuruthy, Thevara — APPELLANT

Vs

National Company Law Tribunal Company Law Bhavan Bmc Road, Thrikkakara P.S. Kakkanad, Kochi-682 021, Represented By Assistant Registrar — RESPONDENT

Date of Decision : 02-07-2021

Acts Referred:
Constitution of India, 1950 — Article 226
Insolvency and Bankruptcy Code, 2016 — Section 30(6), 31(1), 61

Citation : (2021) 07 KL CK 0028

Hon'ble Judges : V.G.Arun, J

Bench : Single Bench

Advocate : G.Harikumar, Akhil Suresh, P.Vijayakumar, K.Latha, Pradeep Joy, S.Sreekumar, Millu Dandapani P.Martin Jose, P.Prijith, Thomas P.Kuruvilla, Anna Linda V.J, Ajay Ben Jose, Manjunath Menon, R.Githesh, P.H.Arvindh Pandian, .P.Vijayakumar

Final Decision : Dismissed

Judgement

V.G.Arun, J

1. The challenge in these original petitions is against the proceedings of the National Company Law Tribunal (NCLT), Kochi Bench. The essential

facts are as under; For the sake of convenience, the parties and the Exhibits are referred to, as described in W.P.(C) No.8257 of 2021;

The proceedings under challenge pertains to the Corporate Insolvency Resolution Process initiated under the Insolvency and Bankruptcy Code, 2016

('the Code' for short) with respect to the 4th respondent; Corporate Debtor. The proceedings commenced at the instance of two Operational

Creditors. Ext.P1 order was issued by the NCLT appointing the second respondent as Interim Resolution Professional(IRP). The IRP was

reappointed as the Resolution Professional (RP) by the members of the Committee of Creditors. In accordance with the procedure prescribed by the

Code, application under Sections 30(6) and 31(1) was filed by the RP, seeking approval of the Resolution Plan submitted by the third respondent;

Resolution Applicant. By Ext.P2 order dated 22.02.2021, the NCLT approved the Resolution Plan and made it effective from the date of order. Being

aggrieved by Ext.P2 order, the petitioners, who are Operational Creditors, preferred appeals before the National Company Law Appellate Tribunal

(NCLAT). These writ petitions are filed on the premise that the appeals and stay petitions are not being taken up by the NCLAT. While admitting the

writ petition, this Court granted an interim stay of further proceedings pursuant to Ext.P2 order.

2. The third respondent and the additional 5th respondent has challenged the very maintainability of the writ petition.

3. I heard Advocates Akhil Suresh and Jinish Paul appearing for the petitioners, Senior Advocates Sri.P.H.Arvindh Pandian, Sri.S.Sreekumar

appearing for the contesting respondents, Sri.Millu Dandapani for the Corporate Debtor, Smt.K.Latha for the Resolution Professional and

Smt.S.Krishna, learned Counsel representing the ASG.

4. The maintainability of the writ petitions is challenged on the ground that the petitioners have an effective alternative remedy of appeal under Section

61 of the Code. In support of this contention, reliance is placed on the Division Bench decision of this Court inS ulochana Gupta and others v. RBG

Enterprises Pvt. Ltd and others (judgment in W.A.No.1083 of 2020). The averment in the writ petitions that the appeals are not being taken up, as the

NCLAT is on leave, is refuted. According to the learned Senior Counsel, the appeals are defective and will be taken up only after the defects are

cured. It is pointed out that the NCLAT is functioning and the appeals filed by other Operational Creditors against Ext.P2 order had come up for

admission. However, no stay or even status quo order was granted. It is contended that interference by the High Court, in exercise of jurisdiction

under Article 226 of the Constitution, will defeat the very objective of the Code, which has been enacted with a view to consolidate and amend the

law relating to insolvency resolution. Attention is drawn to the observations of the Honourable Supreme Court in Swiss Ribbons Pvt.Ltd and another v.

Union of India and others [(2019) 4 SCC 17] and Ghanashyam Mishra and Sons Private Ltd v. Edelweiss Asset Reconstruction Company [2021 SCC

Online SC 313] to contend that the IBC, 2016 being a self contained Code, the High Courts should refrain from interfering with the resolution process.

5. Learned Counsel for the petitioners submitted that their appeals have been accepted by the NCLAT, but are yet to be numbered and posted for

admission. In the meanwhile, if the resolution process is continued in accordance with Ext.P2 order, the appeals will be rendered infructuous. In such

circumstances, the High Court can, in the interest of justice, exercise its jurisdiction under Article 226 to safeguard the interest of the petitioners, till

the appeals are taken up for consideration. Ext.P3 is pointed out to be an interim order granted by this Court under similar circumstances.

6. Learned Counsel for the 4th respondent supported the submissions made on behalf of the petitioners and contended that Ext.P2 order is patently

illegal. That, hasty steps are being taken to give effect to the order before the appeals are taken up for hearing and that, implementation of the

Resolution Plan will cause serious prejudice to the Corporate Debtor and its creditors.

7. AsÂ observedÂ byÂ theÂ ApexÂ CourtÂ inÂ M/s. Innoventive Industries Ltd v. ICICI Bank [AIR 2017 SC 4084], the IBC, 2016 is a Single

Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time bound manner.

The code provides a three-tier mechanism namely, (i) the NCLT, which is the adjudicating authority (ii) the NCLAT, which is the appellate authority

(iii) the Supreme Court, which is the final authority, for dealing with all issues that may arise in relation to the re-organisation and insolvency resolution

of corporate persons. An order passed by the NCLT is appealable to the NCLAT under Section 61 of the Code and the orders of the NCLAT are

amenable to the appellate jurisdiction of the Supreme Court under Section 62.

8. In Swiss Ribbons Pvt.Ltd (supra), the Honourable Supreme Court, while rejecting the challenge against certain provisions of the code held as under:

â??The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier

experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated 'errors', ultimately led to the enactment of the Code. The experiment

contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes

constitutional muster.â??

9. One of the issues that arose for consideration before the Division Bench in Sulochana Gupta, was the maintainability of the writ petition under

Article 226 against an order of the NCLT. The Division Bench, after elaborate survey of precedents, answered the issue by holding that the writ

petition to be not maintainable.

In view of the exposition of the Honourable Supreme Court regarding the objective of the Code and the authoritative pronouncement of the Division

Bench, with which I am in respectful agreement, the writ petitions are dismissed.