

(2025) 06 DEL CK 0681

In the Delhi High Court

Case No : Writ Petition (C) No. 8531 Of 2025 & Civil Miscellaneous Application
No. 36968 Of 2025

Shailesh Agarwal

APPELLANT

Vs

M/s Cosmo World & Ors

RESPONDENT

Date of Decision : 27-06-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Insolvency and Bankruptcy Code, 2016 — Section 9, 61

Citation : (2025) 06 DEL CK 0681

Hon'ble Judges : Renu Bhatnagar, J

Bench : Single Bench

Advocate : Paras Mithal, Prakhar Mithal, Arjun Katyal,

Final Decision : Disposed Of

Judgement

Renu Bhatnagar, J.

1. The present writ petition has been filed invoking the extraordinary jurisdiction of this Court under Article 226 read with 227 of the Constitution of India, seeking the following reliefs:

“(a) Appropriate writ, order or direction in the nature of mandamus upon the interim resolution professional of respondent no. 2 to not take any steps in furtherance of order dated 12.06.2025 in CP(IB) No. 10 (MP) 2024 passed by the Id. national company law tribunal, Indore bench till the appeal is heard by Id. National Company Law Appellate Tribunal, New Delhi or/ in the alternative

(b) The respondent no. 3 be directed to list the appeal before the Id. NCALT any day before 28.06.2025 in order to prevent grave and irretrievable prejudice to the corporate debtor and to uphold the sanctity of the judicial process’

(c) Pass such further orders or directions as this Hon’ble Court may deem just, fit and proper in the interest of justice and to prevent irreparable harm to the Petitioner and Respondent No. 2.”

2. Brief facts which give rise to the instant petition are that the respondent No. 1 and respondent No. 2, entered into an Exclusive Original Equipment Manufacturing Agreement dated 16.01.2021, for providing two and three-wheeler electric vehicles to the respondent No. 1. However, due to the default in payments, respondent No.1 issued a demand notice dated 22.03.2023 to respondent No.2, claiming an unsubstantiated amount of Rs. 1,09,11,600.92/- due from the respondent No. 2.

3. Subsequently, respondent No. 1 approached the Adjudicating Authority, i.e., the learned National Company Law Tribunal, Indore, (hereinafter referred to as 'NCLT') by filing an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') seeking initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against the respondent No. 2/Corporate Debtor for the default of the aforesaid amount. In light of the same, the learned NCLT, Indore, vide its order dated 12.06.2025 passed in CP(IB) No. 10 (MP) 2024, admitted respondent No. 2 in insolvency, thereby, initiating CIRP against it.

4. Aggrieved by the aforesaid Order, the petitioner herein, who is the member of the suspended management of respondent No. 2, invoked the statutory remedy provided under Section 61 of the IBC and proceeded to file an appeal on 17.06.2025 before the learned National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as 'NCLAT').

5. It is pertinent to mention herein that on 18.06.2025, the matter was mentioned before the learned NCLAT for its urgent listing on 23.06.2025 or any day before 28.06.2025, however, the relief seeking early listing of the matter was rejected on the said date by the learned NCLAT.

6. In view of the peculiar facts and urgency of the matter, the petitioner has approached this Court inter alia seeking a direction to the Interim Resolution Professional (hereinafter referred to as 'IRP') of respondent No. 2 to not take any steps in furtherance of the Order dated 12.06.2025, passed by the learned NCLT, Indore, till the appeal is heard by the learned NCLAT, New Delhi, or, in the alternative, seeks a direction to the respondent No.3, i.e., the Registrar of learned NCLAT, to list the appeal before it on any day before 28.06.2025.

7. The learned counsel appearing on behalf of the petitioner has apprised this Court that the appeal pending before the learned NCLAT is listed on 30.06.2025, as a result of which, the present writ petition is of utmost urgency inasmuch as the IRP of respondent No.2 has issued a public announcement dated 17.06.2025, calling for submission of claims till 28.06.2025. He submits that after 28.06.2025, the Committee of Creditors (hereinafter referred to as 'COC') will be constituted which can take possession of the company of the petitioner, i.e., respondent No.2. It is, therefore, submitted that unless either of the prayers sought, are not granted by this Court, the whole purpose of the appeal filed under the provisions of the IBC will stand defeated, thereby, causing corporate

death of the petitioner's company.

8. Learned counsel for the petitioner further submits that this Court, under its extraordinary jurisdiction under Article 226 read with 227 of the Constitution of India, is empowered to direct the respondent No. 3 to urgently list the matter any day before 28.06.2025, or, direct the IRP of respondent No. 2 to not proceed with the directions passed by the learned NCLT, Indore, till the appeal is heard by the learned NCLAT.

9. This Court has heard the learned counsel for the petitioner and has meticulously perused the relevant material placed on record.

10. Inasmuch as the prayer that the respondent No. 3 be directed to list the appeal before the learned NCLAT any day before 28.06.2025, is concerned, it is a settled position of law that High Courts are generally discouraged from interfering with the routine functioning of a Tribunal such as the NCLAT. The extraordinary jurisdictional powers of a High Court are to be exercised with great caution and the same does not merit unnecessary interference in dictating the NCLAT's operational procedure.

11. Furthermore, the IBC, which is a special act, establishes the framework as to how its Tribunals should emphasize a time-bound process for adjudicating insolvency matters. It is also pertinent to state that the proper recourse as per IBC's hierarchy is for the aggrieved party to approach NCLAT as against the findings of NCLT, and thus, filing a writ petition, disguised as an appeal, in the High Court against the order of NCLT, is not the proper course of law and the same is thus, liable to be considered only by the appropriate forum, i.e., the NCLAT.

12. In view of the aforesaid observations, this Court is of the considered opinion that it cannot govern the calendar of the learned NCLAT in exercise of its extraordinary jurisdictional powers. The Supreme Court in *Allahabad High Court Bar Assn. v. State of U.P. & Ors.*, (2024) 6 SCC 267, has held that in the ordinary course, the Constitutional Courts should refrain from fixing a time bound schedule for the disposal of cases pending before any other Courts. We may quote from the said Judgment as under:

"47.3. Constitutional courts, in the ordinary course, should refrain from fixing a timebound schedule for the disposal of cases pending before any other courts. Constitutional courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the courts concerned where the cases are pending;"

13. It is further relevant to note that since the instant petition has been taken up today, i.e., 27.06.2025, and the appeal is listed before the learned NCLAT on 30.06.2025, it is therefore, impractical to allow the relief for directing respondent No. 3 to list the appeal before the learned NCLAT before 28.06.2025, i.e., a

Friday, keeping in view the fact that the learned NCLAT only conducts Court proceedings on Mondays and Wednesdays during the vacations, and thus, this prayer has become infructuous.

14. With the aforesaid observations as well as the fact that this Court cannot interfere with the procedural functioning of a specialized Tribunal such as the learned NCLAT, this Court finds no merit in allowing the aforesaid prayer of the petitioner.

15. Furthermore, the IRP of the respondent No.2 has issued a public announcement dated 17.06.2025, calling for submission of claims till 28.06.2025. In the interregnum, 29.06.2025 is a holiday being Sunday. The appeal of the petitioner before the learned NCLAT is already listed on 30.06.2025.

16. As the impugned Order is dated 12.06.2025, this Court finds that there is no urgency for issuing of ex parte directions as prayed for. The matter is already listed before the learned NCLAT on 30.06.2025. Therefore, no further orders are required to be passed in the instant case. Accordingly, the present writ petition along with pending applications, stands disposed of in the above terms.

17. However, it is made clear that observations made herein shall not affect the merits of the case.