

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.4746 OF 2018  
ALONGWITH  
CIVIL APPLICATION NO.1229 OF 2018**

**Mr. Swapnil Jijaba Bhingardeva ..Petitioner/Applicant  
Versus  
National Company Law Tribunal Mumbai  
Bench Mumbai and others and others ..Respondents**

**Mr. V. P. Sawant a/w Tanaya Patankar I/by S. A. Masal,  
Advocate for the Petitioner/Applicant.  
Mr. Sanjay Jain a/w Prachi Wazalkar, Advocate for the  
Respondent No.2.  
Mr. Navin Arora, Advocate for the Respondent No.4.**

**CORAM : B. R. GAVAI &  
M. S. KARNIK, JJ.  
DATE : 23<sup>rd</sup> AUGUST, 2018**

**P.C.**

**1]** The Petitioner by way of present Petition challenges two orders, first dated 1<sup>st</sup> January 2018, thereby admitting the Petition under Section 7 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the said Act”) filed by the Respondent No.2 and the order dated 6<sup>th</sup> March 2018, vide which one Mr. Jitendra Palande has been appointed as Insolvency Resolution Professional for conducting the affairs of the company under the liquidation.

2] Mr. V. P. Sawant, learned counsel appearing on behalf of the Petitioner submits that the entire conduct of the learned Tribunal would show that the proceedings are not conducted in a fair, reasonable and transparent manner. He submits that as a matter of fact, prior to Respondent No.2 filing its Petition for liquidation, the Petitioner itself had filed Petition under Section 10 of the said Act. It is submitted that the Petitioner's Petition was filed on 6<sup>th</sup> September 2017 with advance copy to the Respondent No.2 on 31<sup>st</sup> August 2017. It is thus submitted that the Petition which is filed by the Respondent No.2 on 7<sup>th</sup> September 2017, was with the knowledge of the Respondent No.2, that the Petitioner has already filed Petition under Section 10 of the said Act. It is submitted that when the matter was listed before the learned Tribunal on 13<sup>th</sup> December 2017, clerk of the Respondent No.2 had informed the Petitioner that the matter was being adjourned to a subsequent date. He further submits that the Petitioner was surprised to receive a notice from the Respondent No.3 about the order passed by the learned Tribunal on 1<sup>st</sup> January 2018, in the Petition filed by the Respondent No.2, thereby admitting the Petition. On inquiry, the Petitioner came to know that the learned Tribunal had passed order

on 13<sup>th</sup> December 2017 in the Petition filed by the Petitioner that in view of the order passed in the Petition filed by the Respondent No.2, the Petition of the Petitioner has become redundant and consigned to records. It is therefore submitted that when the order was passed on 13<sup>th</sup> December 2017, on the Petition filed by the Petitioner, the order purported to be passed on 13<sup>th</sup> December 2017 was not in existence. As a matter of fact, an order has been passed on 1<sup>st</sup> January 2018. It is therefore submitted that on this short ground alone, the Petition deserves to be allowed. It is further submitted that the second order dated 6<sup>th</sup> March 2018, thereby appointing the Respondent No.4 as Insolvency Resolution Professional instead of Respondent No.3 is also passed without hearing the Petitioner. It is therefore submitted that on the basis of basic principles of breach of principles of natural justice, the impugned orders are liable to be quashed and set aside.

**3]** Mr. Sanjay Jain, learned counsel appearing on behalf of the Respondent No.2 vehemently opposes the Petition. He submits that the conduct of the Petitioner is not such, which would entitle the Petitioner to the equitable relief under Article 226 of the

Constitution of India. It is submitted that in pursuance to the order passed by the learned Tribunal on 1<sup>st</sup> January 2018, the proceedings were initiated by the Respondent No.3 vide communication dated 11<sup>th</sup> January 2018. The Petitioner had participated in the said proceedings and also submitted his proposal. It is submitted that only after finding that the proceedings initiated by the Respondent No.3 initially and subsequently by Respondent No.4 were not as per the desire of the Petitioner, the Petitioner has approached this Court.

4] No doubt that, it is settled principle of law that justice should not only be done, but also should appear to have been done.

5] Normally, in the present circumstances, had the Petitioner challenged the orders, immediately after the orders passed by the learned Tribunal in the Petition filed by the Respondent No.2 dated 13<sup>th</sup> December 2017/ 1<sup>st</sup> January 2018, the Court could have very well considered the grievance of the Petitioner. However, by now, it is equally settled principle of law that the Court is required to take into consideration the conduct of the party approaching before the Court in its extraordinary

jurisdiction.

6] It can clearly be seen that in the present case, after the orders were passed by the learned Tribunal dated 13<sup>th</sup> December 2017/1<sup>st</sup> January 2018, the Petitioner very well came to know about the said orders immediately either on 11<sup>th</sup> January 2018 or soon thereafter. Not only this, but subsequent to the notice issued by the Insolvency Resolution Professional, the Petitioner has also participated in the proceedings before the Respondent No.3. The order passed by the learned Tribunal of changing Insolvency Resolution Professional and appointing Respondent No.4 was passed on 6<sup>th</sup> March 2018 and thereafter the Petitioner has approached this Court under the guise of challenging the order dated 6<sup>th</sup> March 2018 on the ground that it is in violation of principles of natural justice. Now the Petitioner also desires to go back to challenge the orders dated 13<sup>th</sup> December 2017/ 1<sup>st</sup> January 2018.

7] Undisputedly, under the provisions of Section 61 of the said Act, the order which is sought to be challenged by the Petitioner can be challenged by way of an Appeal before the

National Company Law Appellate Tribunal. Under Sub Section (2) of Section 61 of the said Act, the Appeal is required to be filed within a period of thirty days from the date of the order. Under Sub Section (1) of Section 62 of the said Act, a person aggrieved by an order of National Company Law Appellate Tribunal is also entitled to file an Appeal before the Hon'ble Supreme Court within a period of 45 days.

8] In the present case, even after the Petitioner was aware of the orders dated 13<sup>th</sup> December 2017/1<sup>st</sup> January 2018, the Petitioner participated in the proceedings before the Insolvency Resolution Professional. Much after the period of said one month has lapsed, now the Petitioner seeks to challenge the order in the extraordinary jurisdiction of this Court.

9] We are of the considered view that the Petitioner has adopted tactics of “taking chances”. Had the proceedings before the Insolvency Resolution Professional gone as per the desire of the Petitioner, the Petitioner would not have thought it necessary to approach this Court. There appears to be substance in the submission of the learned counsel for the Respondent No.2 that only

after the Petitioner found that the proceedings before the Insolvency Resolution Professional are not proceeding as per the desire of the Petitioner, the Petitioner has now come with a circuitous route of challenging the orders dated 13<sup>th</sup> December 2017/1<sup>st</sup> January 2018.

**10]** In that view of the matter, we find that the Petition deserves to be thrown out on the ground of conduct of the Petitioner. The Petition is therefore dismissed with cost quantified at Rs.25,000/-.

**11]** In view of disposal of Writ Petition, Civil Application does not survive and accordingly stands disposed of.

**12]** At this stage, Mr. Sanjay Jain, learned counsel for the Respondent No.2 states that he is not interested in costs and to be paid to the charitable institution.

**13]** Costs of Rs.25,000/- to be paid by the Petitioner to the Tata Cancer and Research Hospital within a period of 15 days from the date of this order.

Balaji  
Govindrao  
Panchal

Digitally signed by  
Balaji Govindrao  
Panchal  
Date: 2018.09.04  
10:46:20 +0530

**[M. S. KARNIK, J.]**

**[B. R. GAVAI, J.]**