

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9131 of 2018 (O&M)

Date of Decision: 01.05.2018

SEL Manufacturing Company Ltd. & Anr. ... Petitioners

VS.

Union of India & Ors. ... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SHEKHER DHAWAN**

Argued by: Mr. Mukul Rohtagi, Senior Advocate and
Mr. Anand Chhibber, Senior Advocate,
with Messers Sumeet Goel, Arunabh Chowdhary,
Arvind Gupta and Siraj Ahmad, Advocates,
for the Petitioners.

Mr. Dheeraj Jain, Advocate,
for respondents no.1 & 2.

Ms. Manisha Gandhi, Senior Advocate with
Messrs Misha, Nitin Kaushal, Siddhant Kant,
Vibhav Sharma, Viraj Gandhi, Salina Chalana, Advocates
for respondent no.4.

Shekher Dhawan, J

(1) Petitioner No.1 is a company incorporated under the Companies Act, 1956 and petitioner No.2 is its Managing Director. In the instant writ petition filed against (i) Union of India through Ministry of Finance; (ii) Ministry of Textiles; (iii) Reserve Bank of India; (iv) State Bank of India and 16 other lender Banks; (v) State of Madhya Pradesh, the petitioners have briefly sought the following reliefs:-

- (i) the Bank Consortium comprising respondents No.4 to 20 - Banks be directed to realise and adjust the capitalized loss subsidy of Rs.542 crores in the loan due amount of petitioner No.1-Company;
- (ii) the Bank-Consortium be directed to implement the Master Restructuring Agreement (MRA)/Corporate Debt

Restructuring (CDR) Package dated 30.06.2014 in letter and spirit including to release working capital of Rs.800 crore;

- (iii) the CDR (Empowered Group) or any other appropriate authority be directed to assess and the respondent-Banks be directed to compensate the petitioner No.1-Company for the loss or profits;
- (iv) the Ministry of Finance be directed to make the public sector Banks accountable; policy guidelines be formulated to prevent the borrowers from being prejudiced;
- (v) the Ministry of Textile and State of Madhya Pradesh be directed to grant the subsidy amount to first petitioner;
- (vi) the Insolvency Petition filed by respondent No.4 (SBI) before the National Company Law Tribunal, Chandigarh be declared to be frivolous, misconceived, vexatious and violative of guidelines dated 28.08.2017 issued by Reserve Bank of India;
- (vii) SBI and other lender-Banks be restrained from pursuing the Insolvency Petition pending before NCLT;
- (viii) the order dated 11.04.2018 (P24) passed by NCLT be set aside.

(2) According to the petitioners, petitioner No.1-company is one of the biggest textile companies in India and is one of the largest textile exporter with 60000 share holders and is providing direct/ indirect employment to more than 50000 persons. However, because of the actions/ inactions on the part of respondents No.4 to 20, who are Consortium of the Banks have turned into a Non Performing Asset. The petitioner-company had set up a spinning

manufacturing unit at village Mehatwara, District Sehera, Madhya Pradesh with an investment of approximately Rs.2500 Crores and it is entitled to textile subsidy from both Central Government and the State Government of Madhya Pradesh. The petitioner-company is also entitled to interest subsidy of 7% from respondent No.21 and interest subsidy of 5% from the Central Government on the investment. The amount of subsidy was Rs.190 Crores to be paid by the State Government of Madhya Pradesh and Rs.271 Crores by the Central Government alongwith interest and the total amount comes to Rs.542 Crores. The said issue was noted in various Joint Lenders Forum (JLF) meetings. However, the Banks have failed to provide promised working capital. The lender-Banks have also failed to take up the cause of first petitioner for the release of subsidy amount before the Central and State Government though the obligation lies on them to ensure timely release of the said subsidy.

(3) Subsequently, to resolve the issue, Master Restructuring Agreement (MRA) dated 30.06.2014 was entered into between Bank Consortium and petitioner-company and as per the said agreement, the requisite Working Capital Loan and balance Term Loan were to be released, but despite that, Bank Consortium failed to disburse working capital of Rs.800 Crores and about Rs.200 Crores of Term Loan as agreed in the Joint Lenders Forum (JLF) meetings upto March, 2017. Undisputedly, the loan exposure *qua* petitioner-company is to the extent of Rs.4000 Crores which is less than the mandate of Rs.5000 Crores and therefore, respondent No.4 ought to have given an opportunity of debt restructuring to the petitioner-company. However, respondent No.4 filed an Insolvency Petition under Section 7 of the Insolvency and Bankruptcy Code-2016 (for short, '**the Code**') before National Company Law Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal') which

is in complete violation of Reserve Bank of India (RBI) guidelines and the provisions of the Code. The Bank Consortium is bound to comply with the provisions of MRA dated 30.06.2014. As such, the action of the Bank Consortium is arbitrary, discriminatory and contrary to the RBI guidelines. The petitioner-company fulfilled all its obligations, but the Bank Consortium failed to verify legal and financial requirements of the RBI guidelines to sanction the Working Capital Loan. The petitioner-company successfully went through a forensic audit as directed by the Bank Consortium. The forensic auditors did not find any fault in the working of the petitioner-company. On the basis of forensic report, the bankers mandated for techno-economic viability study which was carried out by M/s Wazir Advisers, Gurgaon. In the meeting held on 27.03.2017, Wazir Advisers had confirmed that the petitioner-company is fully viable. The State Bank of India obtained the account through merger of State Bank of Patiala, State of Bank of Travancore, State Bank of Hyderabad, State Bank of Mysore and State Bank of Bikaner and Jaipur and, as such, the State Bank of India, not only inherited the rights of the predecessor Banks, but also their obligations and that being so, the State Bank of India is not entitled to maintain any Insolvency Petition against the petitioner-company. Though the petitioner-company had a loan exposure of Rs.4000 Crores, yet respondent No.4, instead of giving an opportunity of debt restructuring to the petitioner-company without seeking approval of CDR-EG without compensating the petitioners for subsidy loss, filed insolvency petition under Section 7 of the Code before the Tribunal at Chandigarh in which the Tribunal has passed the impugned order dated 11.04.2018 (Annexure-P24), which is arbitrary and discriminatory as the Tribunal "Admitted" the petition under Section 7 of the Code and posted the matter for 19.04.2018 for passing formal order of appointment of Interim Resolution Professional.

(4) Notice of motion was issued qua respondents No.1 to 4 only. The other respondents including the lender-Banks, other than SBI as well as State of Madhya Pradesh have not been called upon, at this stage.

(5) Respondent No.4 i.e. State Bank of India has filed short reply, *inter alia*, taking the pleas that the present writ petition deserves to be dismissed as the same is not maintainable because an alternative effective remedy in the form of appeal under Section 61 of The Insolvency and Bankruptcy Code, 2016 is available to the petitioner. More so, the writ petition is not maintainable because the same is arising out of pure contractual matters seeking contractual reliefs of specific performance and damages. A preliminary objection has also been taken that these issues cannot be raised in the writ jurisdiction being barred on account of constructive *res-judicata* as all these pleas had already been taken by the company before the Tribunal during the pendency of the petition filed under Section 7 of the Code in which the petitioners got 15 effective opportunities once a period of six months. The provisions of the Code have an overriding effect. It was further mentioned that Section 61 of the Code provides specific remedy of appeal and if an alternative remedy is available to a litigant under the provision of a Statute, the writ petition should not ordinarily be entertained. The relief claimed in the present writ petition arises out of the contractual matters seeking specific performance and damages. The Tribunal has after long hearings passed the order dated 11.04.2018 after giving due consideration to each of the above objections. On facts, it is averred in the reply that the petitioner itself is in gross violation of MRA because the main condition in the MRA was that certain non-core assets such as properties in Gurugram and the hotel property in Agra were to be sold by the petitioners and the sale proceeds were to be used towards reduction of the Working Capital Term Loan but in

utter disregard to the undertaking given by the petitioner, the amount received from sale of non-core assets was utilized by the petitioner-Company for the purpose other than the reduction of Working Capital Term Loan. This fact was also reflected in various meetings of Joint Lenders Forum (JLF) as per terms of MRA. The petitioner was required to close all accounts being maintained outside the Banks who form a part of the JLF and route all the money through the trust and retention account maintained but again in utter disregard to the same, the petitioner continued to maintain accounts with various banks outside the JLF including ICICI Bank and thereby diverted the funds from lenders which was duly objected and recorded in various JLF meetings. The lenders supported the petitioner at each stage for the release of subsidies from the Government but the petitioner at one of the meeting specifically asked the lenders not to write to the TUFS Cell as the petitioner itself was following up the same. All the material facts have been suppressed by the petitioners thereby dis-entitling them to seek relief by way of present writ petition. Respondent No. 4 has further averred that even after restructuring of the account of the first petitioner and execution of MRA in June, 2014, its accounts were categorized as 'Non-Performing Asset' in 2016 as the petitioners had been utilising every possible tactic to derail the process and cause huge loss to the banks and financial institutions, who are custodians of public money. JLF has a mandatory requirement as per the RBI Guidelines issued vide No.RBI/2013-14/503 dated 26.2.2014 that once the default subsists in excess of sixty days, the JLF may consider resolution through non-statutory voluntary mechanism. It has been thus prayed that the present petition is not maintainable and deserves to be dismissed.

(6) In a separate short reply filed by respondent no. 2, i.e. Ministry of Textile, contention was raised that the petitioner-Company had never

approached the Ministry for the release of interest subsidy said to be due and payable. The entitlement to subsidy is not a fundamental right as it governed by fulfillment of the conditions set-out in the applicable scheme. There are no allegations by the petitioner against respondent No. 2 in the present petition regarding arbitrariness or any violation of terms of the scheme or non-fulfillment of any obligation. The issues concerning Term Loan sanction and disbursements of the same are between the petitioner-Company and the lending agencies. The Technical Upgradation Fund Scheme (TUFS) is a credit linked scheme which was introduced in the year 1999 to catalyze investments in all the sub-sectors of textiles and jute industry. The scheme was launched in reconstructed form. The TUFS scheme was implemented through lending agencies and the nodal agencies under the said scheme i.e., IDBI, SIDBI and IFCI were to determine the eligibility for the benefits under the Scheme. However, in the present case, the petitioner-Company had not given any details of the Terms Loans, like date of sanction of Term Loan and amount of term loan sanctioned and disbursed by each member of the Bank Consortium. It is difficult to locate the term loan accounts of the company as the petitioner-Company has many accounts with various banks under the Scheme. Therefore, the account will be eligible for subsidy only when all the conditions under the Scheme are fulfilled. It is not clear whether the petitioner has not received any subsidy at all or initially received subsidy and stopped receiving later due to its categorization as NPA due to restructuring. The details given by the petitioner are very old and are from quarter ending June, 2007. The beneficiaries are eligible under the TUF scheme only after fulfillment of all the conditions prescribed thereunder. Respondent No.2 too has prayed that the present writ petition deserves dismissal on this account.

(7) Before advertizing to the rival contentions, we deem it appropriate to very briefly refer to the statutory scheme of the Code of 2016. The Statute has been enacted for *“reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons... and also to balance the interest of all the stake-holders including alteration in the order of priority of Government dues...”*. Section 3(12) of the Code defines “default” to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. Section 7 of the Code enables a financial creditor either by itself or jointly with other financial creditors to file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority i.e. National Company Law Tribunal (NCLT). The *Explanation* given below Section 7(1) is also very relevant and it says that *“For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor”*. Section 16 empowers the Adjudicating Authority to appoint an Interim Resolution Professional within fourteen days from the insolvency commencement date.

(8) Section 60 of the Code provides that NCLT shall be Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof. Its sub-section (5) opens up with an *non obstante* clause and confers following powers on the NCLT:-

“(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

(9) Section 61 thereafter provides the express remedy of appeal whereunder any person aggrieved by the order of the Adjudicating Authority may prefer an appeal to the National Company Law Appellate Tribunal (NCLAT). There lies a further appeal before the Hon’ble Supreme Court against the order of NCLAT as provided under Section 62 of the Code.

(10) Section 238 gives an overriding effect to the provisions of the Code and it says that “the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law”.

(11) We have heard learned senior counsel for the parties at a considerable length and have gone through the record with their able assistance.

(12) Mr. Mukul Rohtagi, learned senior counsel for the petitioners vehemently urged that the points raised in the present writ petition are on the issues, which cannot be decided by the Tribunal or under the Code. Consequently, the actions on the part of the respondents and Tribunal are without jurisdiction and in such circumstances, only this Court is competent to look into all these pleas. Learned senior counsel further contended that in the present case, the State Bank of India, respondent No.4, violated the RBI

instructions. As per the provisions of Section 35AA of the Banking Regulation Act, the RBI can issue statutory instructions which are binding upon all the banks, including respondent No.4. During the restructuring proposal, initially a period of six months was given. However, the same did not work out during the period from June, 2017 to December, 2017. The spirit of restructuring Code is that viable attempts are to be made to restructure a running industry. The petitioner-Company is one of the largest textile industries in India and is providing directly and indirectly employment to about 50000 people and are dealing in export of garments, thereby earning huge foreign exchange for the country. There was not even a single default towards payment of income tax or any other statutory liability or payment of wages and other benefits to its employees. So, it cannot be said to be a sick industry which cannot be restructured, rather, the problems being faced by the petitioner-company are because of action/non-actions on the part of lending banks and Ministry of Textile, who in turn did not release the working capital. The petitioner-Company had set-up the unit in Madhya Pradesh with huge investments worth Rs. 2500 Crores and the lenders in this case did not release the amount of working capital as agreed to vide JLF.

(13) Learned senior counsel for the petitioners also submitted that if we go by the statistics, even NPA was less than the outstanding subsidy amount at the relevant time meaning thereby that it was only because of delay on the part of the respondents in releasing the financial support and despite resultant scarcity of financial resources that the petitioner-Company has survived. All these points were expressly raised before the Adjudicating Authority, but learned Tribunal despite taking cognizance of these points, has simply admitted the petition under Section 7 of the Code on untenable grounds and without giving any findings on these contentions.

(14) The precise contentions raised by learned senior counsel for the petitioners may be summarized to say that:-

- (a) the pleas raised in the writ petition cannot be adjudicated by any Authority under the 2016 Code. The Authorities are creation of Statute, hence cannot go beyond the scope thereof;
- (b) the reliefs sought in the writ petition or as may be seen in the prayer clause, cannot be granted in an appeal;
- (c) State Bank of India alone is party before the NCLT whereas several other Banks and official respondents have been impleaded in the instant writ petition;
- (d) The action of the SBI in filing Insolvency Petition is completely without jurisdiction for which writ petition jurisdiction is the only appropriate remedy.

(15) As regards to maintainability of the writ petition before this Court *vis-a-vis* right to file appeal under Section 61 of the Code, reliance has been placed upon the judgment of Hon`ble Supreme Court in **Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I, Calcutta and Another**, 1961 AIR (SC) 372, wherein the Larger Bench observed in para No. 27 as under:-

“27 The existence of such alternative remedy is not, however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action”

(16) On the same issue, reliance has also been placed on the judgments of Hon`ble Supreme Court in **Popcorn Entertainment and Another v. City Industrial Development Corpn. And Another**, (2007) 9

Supreme Court Cases 593 and Verigamto Naveen v. Govt. of A.P. And Others, (2001) 8 Supreme Court Cases 344.

(17) Learned senior counsel for the petitioners also urged that in identical matters, i.e. **Jayaswal Neco Industries Limited and another Vs. Reserve Bank of India and others, SLP No. 9286-9287/2018 and Jayaswal Neco Industries Limited and another Vs. Reserve Bank of India and others, SLP No. 9286-9287/2018.** Hon`ble Apex Court has passed interim orders dated 16.04.2018 and 05.03.2018 to maintain *status quo* by the parties as existed on that date.

(18) Responding to these contentions, Ms. Manisha Gandhi, learned senior counsel representing respondent No.4/Bank maintained that undisputedly, the petition under Section 7 of the Act has been admitted by the Adjudicating Authority on 11.4.2018 vide impugned order, Annexure P/24. The petitioners herein had been participating in those proceedings throughout which continued for a span of six months and there were fifteen effective hearings in the matter. All these points, now raised in this writ petition, were also raised before the Adjudicating Authority as well. The petitioners took a chance before the Adjudicating Authority but only after being unsuccessful that they have decided to invoke the writ jurisdiction rather than availing the equally efficacious remedy of appeal before the Appellate Tribunal under Section 61 of the Code. The present writ petition is thus not maintainable on this count. She placed reliance on the decision of Hon`ble Supreme Court in **Joshi Technologies International Inc. v. Union of India (UOI) and Ors., (2015) 7 SCC 728.**

(19) Learned senior counsel for SBI also contended that the writ jurisdiction cannot be invoked to seek reliefs originating out of purely contractual obligations. On this point, reliance was placed on the judgment of

Hon`ble Supreme Court in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. R.Rudani and Ors., (1989) 2 SCC 691**. On the same point, reliance was also placed on the judgment of Hon`ble Apex Court in **LIC of India v. Escorts Ltd. MANU/SC/0015/1985 : (1986) 1 SCC 264**, wherein, it has been held that if the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of State, if they pertain to the public law domain, and would refrain from examining if they pertain to the private law field.

(20) Learned senior counsel for the respondent-Bank further urged that the petition is barred by the principles of constructive *res judicata* to raise the same pleas and issues before this Court, which are the subject matter of adjudication before the Adjudicating Authority. On this point reliance has been placed on the Five Judge Bench judgment of Hon`ble Supreme Court in **Amalgamated Coalfields Ltd. & Anr. v. Janapada Sabha Chhindwara and Ors. AIR 1964 SC 1013**, laying down that:-

“Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law.”

(21) On the same point, reliance was also placed on the judgment of this Court in **Hope Plantations Ltd v. Taluk Land Board, Peermade and Anr., (1999) 5 SCC 590.**

(22) Learned senior counsel for respondent-Bank then urged that the petitioner-Company was itself in gross violation of terms of MRA and had been maintaining accounts with various banks other than JLF, including ICICI and thus prayed that the writ petition may be dismissed.

(23) Learned counsel appearing for respondent Nos. 1 and 2 argued that the petitioner-Company had never approached them for release of any subsidy. More so, the grant of subsidy is not a fundamental right. The petitioner-Company had not given the details of the Term Loan and the details given are between the petitioner and the lending agencies. As such, there was inaction on the part of petitioner-Company itself, but at any rate, the petitioners cannot seek a writ of mandamus without first approaching the authority against whom such direction is sought. In the case in hand, the petitioners never before approached the Ministry of Textiles.

(24) Having given our thoughtful consideration to the rival contentions and on perusal of the record, it appears to us that most of the facts are broadly not in dispute that the petitioner-Company has availed credit facilities from Bank Consortium headed by respondent no.4, i.e., State Bank of India. The petitioner-Company failed to make payment as per the financial discipline laid-down between the parties and there were efforts for restructuring of the petitioner-Company's loan account. For that purpose, MRA was signed in the year 2014. The petitioners have taken the plea that the financial discipline could not be maintained because of action/inaction on the part of the joint lenders and respondent No.2, Ministry of Textiles, as adequate working capital was not released in terms of the agreement with the Banks and

Ministry of Textiles. The subsidy amount was not released by the Ministry of Textiles, which is to the tune of Rs.542 Crores. To the contrary, the respondent-Banks have come with the plea that even after signing of MRA, the petitioner-Company did not comply with its terms in its true letter and spirit. The properties at Gurugram and hotel property were to be sold and the sale proceeds were to be used towards reduction of the Working Capital Term Loan but to the contrary, the amount received from sale of non-core assets was utilized by the petitioner Company for the purpose other than the reduction of Working Capital Term Loan. And this fact was also reflected in various meetings of JLF as per terms of MRA. It was agreed between the parties that the petitioner-Company would close all accounts being maintained by it outside the banks, who form a part of the JLF but in utter disregard to the same, the petitioner-Company continued to maintain accounts with various banks outside the JLF including ICICI Bank and thereby ensuring the diversion of funds from the lenders which was duly objected and recorded in various JLF meetings. All these points are primarily questions of facts, which can be effectively adjudicated by the Appellate Tribunal in appeal proceedings for which efficacious and effective remedy has been provided under Section 61 of the Code.

(25) The petitioners cannot be heard to say that writ jurisdiction is the only remedy merely because they have chosen to add some new reliefs or the respondents in the writ petition. There is nothing on record to suggest that the petitioners have ever approached the State of Madhya Pradesh for the release of the due amount of alleged subsidy hence they cannot spring surprise on the Ministry of Textiles or State of Madhya Pradesh by seeking a writ of mandamus without even once agitating the matter before those agencies. Similarly, the question whether RBI guidelines have been followed

or consciously violated by the SBI, is also essentially a question of fact which can be effectively adjudicated by the learned Appellate Tribunal.

(26) Assuming that there is some merit in the petitioners' contention that all these issues were raised before the Adjudicating Authority and the same have not been decided on merits, yet it would not be a sufficient ground to entertain the writ petition. There is a sea difference between 'erroneous exercise of jurisdiction' or 'lack of jurisdiction' in a Tribunal. The erroneous or failure to exercise jurisdiction by a Tribunal is a ground which can be effectively taken before the Appellate Authority. It appears to us that the petitioners cannot be heard to say that notwithstanding the powers expressly conferred under Section 60(5) of the Code, the NCLT lacks jurisdiction to entertain or dispose of the issues raised by them.

(27) Undisputedly, equally efficacious and effective remedy of appeal is available under Section 61 of the Code to the petitioners. More-so, the petitioner-Company had submitted to the jurisdiction of Adjudicating Authority and in that process, continued to appear and associate before the Adjudicating Authority during 15 effective hearings in a long span of 6 months. Unfortunately, instead of approaching the National Company Law Appellate Tribunal under Section 61 of the Code, the petitioner-Company has now preferred to invoke the writ jurisdiction of this Court. In **Joshi Technologies International Inc. v. Union of India (UOI) and Ors.**, (2015) 7 SCC 728, dealing with similar issue Hon'ble Supreme Court in para No. 68 has observed as under:-

“68. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:-

“a. the Court may not examine the issue unless the action has some public law character attached to it.

b. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion Under Article 226 of the Constitution and relegate the party to the said mode of settlement particularly when settlement of disputes is to be resorted to through the means of arbitration.

c. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

d. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.”

(28) It has been further held that the writ jurisdiction under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred and ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

(29) Taking the case from another angle, by now there is an order from learned Tribunal dated 11.4.2018 (Annexure P/24), wherein the facts and pleas taken by both the parties are said to have been considered, though the petitioner-Company is not satisfied with the said findings on the ground that the same have not been effectively redressed. On this account alone, the writ petition is surely not maintainable in the light of the view taken in **Hope Plantations Ltd.'s case (supra)**.

(30) So far as the issue regarding release of subsidy by the Ministry of Textiles is concerned, respondent No.2 in the short reply has denied its

liability and taken plea that the same was never raised as per the requirement of law and even complete information was not supplied to it and on that count, the petitioner was not entitled to get release of subsidy amount. Again this question can be looked into by the Appellate Authority under the Statute or it can be independently raised before an appropriate forum. In any case, the release of subsidy amount as claimed in the instant writ petition may also not be sufficient to bail out the petitioner No.1 from insolvency proceedings in the light of the undisputed fact that its loan liability taken from the Bank Consortium is over Rs.4000 Crore.

(31) We are conscious of the fact that regardless of availability of an alternative remedy, statutory or otherwise, nothing precludes a writ court from invoking its jurisdiction under Article 226 of the Constitution, save where the facts and circumstances of the case justify the invocation of extraordinary jurisdiction. In the case in hand, we are satisfied that no such extraordinary circumstances exists where we should allow the petitioners to avail remedies beyond what is provided under the 2016 Code.

(32) We thus decline to go into the merits of respective contentions raised on behalf of the parties and relegate the petitioners to avail the alternative remedy of appeal as provided under the Code. The observations made hereinabove are *prima facie* opinion only for the purpose of deciding the instant writ petition and the same shall not be taken as an expression of views on merits by either party.

(33) In all fairness, it may be noticed that learned senior counsel for the petitioner-company has handed over a copy of the order dated 19.04.2018 passed by the Adjudicating Authority whereby 'Interim Resolution Professional' has been appointed. He urged that the said order is against the principles of fairness and propriety and the NCLT ought not to have passed

the same when this Court was seized of the matter. Learned senior counsel for the SBI, on the other hand, submitted that there being a statutory time limit prescribed under the Code, it was imperative upon the Adjudicating Authority to appoint the 'Interim Resolution Professional' within the prescribed time and no inference of any other nature may be drawn by this Court.

(34) Having taken note of the above-stated subsequent event and with a view to enable the petitioners to avail the alternative remedy of statutory appeal, as directed above, we deem it appropriate to direct that the 'Interim Resolution Professional' appointed by the Adjudicating Authority vide order dated 19.04.2018 shall not take over management of the first petitioner-Company till 15.05.2018 so as to meanwhile enable the petitioners to file their statutory appeal.

(35) The writ petition is disposed of in above terms.

(SURYA KANT)
JUDGE

(SHEKHER DHAWAN)
JUDGE

01.05.2018
som/vishal shonkar

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes