

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.28894 of 2018
& W.M.P.Nos.33758 & 33762 of 2018

Asaithambi,
Shareholder/Promoter/Director of
M/s.Summer India Textile Mills (P) Ltd.,
No.176/2A, Kozhikalnatham Road,
Thiruchengode, Namakkal,
Tamil Nadu 637 211. ... Petitioner

Vs.

1. Union of India
Ministry of Corporate Affairs,
"A" Wing, 5th Floor, Shastri Bhawan,
New Delhi 110 001
rep. by Under Secretary to
Government of India.
2. Shri.C.V.Madhusudhanan,
Resolution Professional,
101, Indus Chambers',
Government Arts College Road,
Coimbatore-641 018.
3. The National Company Law Tribunal,
through its Deputy Registrar,
Corporate Bhawan, Rajaji Salai,
Chennai-600 001.
4. The National Company Law Tribunal
through its President,
6th Floor, Block 3, CGO Complex,
Lodhi Road, New Delhi-110 003.
5. State Bank of India,
SAMB Branch,
rep. by its Assistant General Manager,
Coimbatore-641 037. ** .. Respondents

** R5 impleaded as per order dated 18.12.2018
passed in WMP No.36304/2018 in WP No.28894/2018

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Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the order dated 21.11.2017 passed by the fourth respondent and quash the same and all consequential orders passed by the third respondent as non-est, null and void.

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For Petitioner :Mr.AL.Somayaji, Senior Counsel
for Mr.P.J.Rishikesh

For Respondents :Mr.C.V.Ramachandramurthy,
CGSC for RR 1, 3 and 4
Mr.H.Karthik Seshadri,
for M/s.Iyer and Thomas for R2
M/s.Ramanlingam & Associates
Standing Counsel for R5

O R D E R

This writ petition is filed challenging the order dated 21.11.2017 passed by the Hon'ble President, National Company Law Tribunal (in short, "NCLT").

2. The petitioner is a textile mills engaged in the business of textile manufacturing. The proceedings were initiated against the petitioner under the Insolvency and Bankruptcy Code, 2016, before the NCLT and the said petition in C.P.No.515 of 2017 was admitted on 13.06.2017 and an Interim Resolution Professional was also appointed. The order of admitting the petition was passed by a Division Bench of the NCLT consisting of a Judicial Member and a Technical Member. Thereafter, several applications were filed and the Division Bench was hearing the applications in the company petition.

3. While so, on 22.11.2017, the President of the NCLT, in exercise of the powers conferred under Section 419 of the Companies Act, 2013, passed an order to the effect that cases which were earlier heard by Division Bench will henceforth be heard by Single Member and vice versa. The same is questioned in this writ petition.

4. Sub-section (3) of Section 419 provides for the constitution of single Bench consisting of a Single Judicial Member with respect to certain class of cases, as the President may specify. Further, the proviso to Sub-section (3) of Section 419 specifies that the President, NCLT, is also vested with the power to transfer the cases pending before a Single Bench to a Division Bench consisting of two members at any stage of the hearing, if the President deems it fit to do so.

5. Be that as it may, learned Senior Counsel for the petitioner contended that above said powers of the President is available only at the institution stage and not to transfer the cases when they are partly adjudicated by a two member Bench and such powers cannot be deemed to be available and thus, he assailed the order dated 22.11.2017 passed by the President contending that the same is without authority.

6. It is also relevant to point out that after the transfer of the matter before the Single Member Bench, the petitioner had appeared more than seven or eight occasions without any murmur. Having acted upon the order impugned, it is not open to the petitioner to challenge the same.

7. It is contended by the learned counsel for the Bank, which was subsequently impleaded, that it is only the exercise of procrastinating the proceedings, as the petitioner had obtained an order of stay from this Court, hence, the Tribunal could not proceed further with the matter.

8. Though this Court is not inclined to get into the merits of the case, learned counsel for the Bank pointed out that the NCLT had passed the liquidation order, which was adjudicated upon by the Supreme Court and the same was dismissed in SLP as early as in March 2018.

9. It is also pointed that it is not a transfer of the cases, but it is only the reconstitution of the Bench and the petitioner has got no vested right to challenge the same. The petitioner also has not stated as to how their rights are affected.

10. It is also not known as to why the petitioner has come before this Court, having submitted itself to the jurisdiction of the transferee Bench more than 8 times. The conduct of the petitioner shows that it is intended only to procrastinate the proceedings and it cannot be really aggrieved by the transfer of the cases before the Single Member Bench.

11. At this juncture, it is relevant to note that the First Bench of the Gujarat High Court in Nipun Praveen Singhvi V. Union of India, 2017 SCC Online Guj 1183, held as follows :

"2. In view of the powers conferred under Section 419 of the Companies Act, 2013 ('the Act' for short), National Company Law Tribunal issued proceedings dated 5th July, 2016 constituting Benches at various places including a Bench at Ahmedabad with two members viz. Shri. Bikki Raveendra Babu, Member (Judicial) and Shri. D.M Gautam, Member (Technical). Subsequently, in exercise of powers conferred under

proviso to Section 419(3) of the Act, the Hon'ble President of the National Company Law Tribunal issued another proceeding for constituting a Bench at Ahmedabad only with the Member (Judicial).

3. It is the case of the petitioner that having regard to nature of work in the National Company Law Tribunal, unless there is Member (Technical) included while constituting Bench, it is not possible for the Member (Judicial) alone to effectively discharge functions.

4. At the first instance, Notification was issued by constituting Bench with two members viz. Member (Judicial) and Member (Technical) at Ahmedabad. But subsequently, exercising powers conferred under proviso to Section 419 of the Companies Act, 2013, order dated 12.08.2016 is passed constituting Bench at Ahmedabad with only Member (Judicial). Reading of the provisions referred in Section 419 of the Companies Act, it empowers the President to constitute the Bench with only one member. If there is any difficulty, it is open for the petitioner to make representation, but at the same time, we do not find any reason to entertain the petition at this stage. While granting liberty to the petitioner to file representation before the President of National Company Law Tribunal, this petition is disposed of. It is made clear that in the event of any further difficulty, liberty is granted to the petitioner to approach this Court."

12. For the foregoing reasons, there is no merits in the writ petition and accordingly, this writ petition is dismissed as devoid of merits, with no costs. Consequently, connected miscellaneous petition are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Under Secretary,
Ministry of Corporate Affairs,
Government of India,
"A" Wing, 5th Floor, Shastri Bhawan,
New Delhi 110 001.

2. The President,
National Company Law Tribunal
6th Floor, Block 3, CGO Complex,
Lodhi Road, New Delhi-110 003.

3. The Deputy Registrar,
National Company Law Tribunal,
Corporate Bhawan, Rajaji Salai,
Chennai-600 001.

4. The Assistant General Manager,
State Bank of India,
SAMB Branch,
Coimbatore-641 037.

+1cc to Mr.P.J.Rishikesh, Advocate, S.R.No.10487

+1cc to Mr.H.Karthik Seshadri, Advocate, S.R.No.10187

+1cc to Mr.C.V.Ramachandra Murthy, Advocate, SR No.10056

+1cc to M/s.Ramalingam & Asso, Standing Counsel SR No.9870

W.P.No.28894 of 2018

SPD(CO)
SSM(01/04/2019).



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