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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8373 of 2019
Date of Decision: 08.07.2019

M/s MAHAVIR GINNING AND PRESSING …... *Petitioner*

V/s.

NATIONAL COMPANY LAW TRIBUNAL, CHANDIGARH BENCH, CHANDIGARH AND OTHERS …....*Respondents*

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI.

Present: Mr. Harsh Garg and Mr. Pulkit, Advocates for the petitioner.

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RAKESH KUMAR JAIN, J. (Oral)

The petitioner is aggrieved against the order dated 19.03.2019 passed by respondent No. 1-National Company Law Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal").

In brief, the petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") was filed by the financial creditor (State Bank of India) before the Tribunal. The said petition was admitted on 11.04.2018 and the matter was adjourned to 19.04.2018 for passing of a formal order of appointment of Interim Resolution Professional (IRP). On 25.04.2018, Mr. Navneet Kumar Gupta was appointed as IRP. Respondent No. 2-Company filed an appeal against the order of admission before the National Company Law Appellate Tribunal (Appellate Tribunal) which is pending adjudication. In the meantime, writ petition bearing No. 15685 of 2018 titled as *Dhiraj Saluja* Vs. *Union of India and others* was filed by one of the Directors of respondent No. 1 before this

Court against the instructions dated 08.08.2017 and circular dated 12.02.2018 by which the agreements and CDR/SDR schemes were nullified. In that petition, notice of motion was issued on 22.06.2018 with a direction that corporate insolvency resolution process (CIRP) against respondent companies be kept in abeyance and the earlier Board of Directors of the respondent companies would operate their bank accounts and bank operations as such before the initiation of CIRP to protect the interest of the bank consortium.

An application was also filed by the said Director before the Hon'ble Supreme Court for transferring the aforesaid writ petition to the Hon'ble Supreme Court which was allowed and the writ petition stands transferred vide order dated 29.12.2018 with the following observations: -

> *"Heard the learned counsel appearing for the parties.*
>
> *For the grounds stated in the Transfer Petition, we allow transfer of Writ Petition being CWP No. 15685 of 2018 titled as Dhiraj Saluja Vs. Union of India and others pending before this High Court of Punjab and Haryana at Chandigarh to this Court.*
>
> *Let the records of the case be transferred without delay.*
>
> *The transfer petition is allowed in the afore-stated terms.*
>
> *In the meanwhile, interim orders passed by the High Court shall continue to operate."*

While aforesaid orders were passed, petitions under Section 9 of the Code, filed by the petitioner and similarly situated other operational creditors were pending. Since, the applications were not being decided, therefore, other similarly situated entities approached the appellate Tribunal in which an order was passed on 23.01.2019 which read thus:-

> *"Appellant filed an application under Section 9 of the I&B Code for initiation of Corporate Insolvency Resolution Process against 'Sel Manufacturing Company Ltd.' (Corporate Debtor). Giving reference to some order passed by Hon'ble Supreme Court in 'Dhiraj Saluja Versus Union of India & Ors.' and some case pending before Hon'ble Punjab and Haryana High Court, the Adjudicating Authority by impugned order passed on 20th December, 2018 adjourned the case for 15th January, 2019. 2. In absence of any finding given in one or other issue by the Adjudicating Authority, while we are not inclined to interfere with order dated 20th December, 2018 but it has not been made clear as to why the Adjudicating Authority has not passed an appropriate order in the application under Section 9. If there is a debt and default and there is no pre-existing dispute or there is a pre-existing -2- dispute or the case relates to matter pending before one or other court, even in such case an appropriate order can be passed by the Adjudicating Authority. 3. We hope and trust that the Adjudicating Authority will pass appropriate reasoned order on the application under Section 9 on the next date or after notice and hearing the parties. The appeal stands disposed of with aforesaid observations. No. costs."*

After the order of appellate Tribunal, the Tribunal has passed the order on 19.03.2019 putting up the petition filed by the petitioner with CP(IB) No. 257/Chd/Pb/2018 which is now posted for 02.08.2019. As a matter of fact, the petitioner is assailing the validity of the order dated 19.03.2019.

At the outset, learned counsel for the respondents, who are present in Court despite no notice has been issued, have submitted that the present petition is not maintainable as the petitioner has the remedy of appeal in terms of Section 61 of the Code.

Learned counsel for the petitioner could not deny this fact but has submitted that the impugned order is causing hurdle in his fundamental right to seek his legal remedy.

We have heard learned counsel for the parties and after examining the record, are of the considered opinion that the petitioner who had not filed the writ petition earlier and has been relying upon the order passed in Company Appeal (AT)(Insolvency) No. 76 of 2019 on 23.01.2019 by the Appellant Tribunal, relegating to the Tribunal for an appropriate order has the remedy to challenge the order passed on 19.03.2019 before the Appellate Tribunal but insofar as the writ petition, which is an extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is concerned, it could be invoked only if no remedy, much less, statutory is available to the petitioner for the redressal of its grievance.

Thus, in view of the above, the present petition is dismissed as not maintainable as the petitioner has the alternate remedy of an appeal under Section 61 of the Code. The petitioner, if so advised, may avail the said remedy in accordance with law.

At this stage, learned counsel for the petitioner has submitted that the limitation to file the appeal is 30 days and as it has come to this Court with a bonafide belief that this Court would have the jurisdiction to redress its grievance, therefore, the period spent in this Court, pursuing its remedy, may be excluded for the purpose maintaining the appeal. It is needless to mention here that such a remedy is available to the petitioner in terms of Section 14 of the Limitation Act, 1963 for the purpose of seeking condonation of delay. In case the application for condonation of delay is also filed alongwith the appeal before the Appellate Tribunal, the same shall be considered sympathetically and objectively.

[RAKESH KUMAR JAIN]
JUDGE

July 8, 2019
Ess Kay

[ARUN KUMAR TYAGI]
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No