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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd December, 2019

+ W.P.(C) 13774/2019 & CM APPL. 55409/2019, 55410/2019

INDIAN OIL CORPORATION LIMITED Petitioner
Through: Mr. Abhinav Vasisht, Sr. Adv.
with Mr. Amit Meharia, Ms.
Tannishtha Singh, Ms. Priya Singh
and Mr. Abinash Agarwal, Adv.
versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Maninder Acharya, ASG
with Mr. Ajay Digpaul, CGSC with
Mr. Aaryan Verma and Mr. Soumava
Karmakar, Adv. for R-1/UOI
Mr. Karan Khanna, Ms. Asmita
Kumar, Adv. for IOB
Mr. Ankur Mittal, Ms. Meera Murali and
Ms. Jasveen Kaur, Adv. for Committee of
Creditors of Punj Lloyd Ltd.
Ms. Tanya Kapoor, Adv. for R-6/SBI

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **ORDER**
23.12.2019

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 55410/2019 (exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13774/2019 & CM APPL. 55409/2019 (for stay)

1. This writ petition has been preferred with the following prayers:

“A. Allow the present Writ Petition.

B. A writ of and/or in the nature of Certiorari do issue calling upon the Ld. NCLT to transmit to this Hon'ble Court entire file in respect of the proceedings being Application No. CA- 2823 (PB)/ 2019 in Petition being No. (IB) -731 (PB)/ 2018 that the same may be quashed and conscionable justice done.

C. Set Aside the impugned order dated 13.12.2019 passed by Respondent No. 2 i.e. Ld. NCLT, Principle Bench, New Delhi in application being No. CA-2823 (PB)/ 2019 in Petition being No. (IB) -731 (PB)/ 2018 titled as "ICICI Bank-vs-Punj Lloyd Ltd";

D. A writ of and/or in the nature of Certiorari and any other appropriate writ/ directions declaring that Section 60(5) of the IBC, is null and void and ultra vires to the Constitution of India to the extent it does not empower the Ld. NCLT to pass any order in relation to the independent Bank Guarantees;

E. A writ in the nature of Mandamus or any other appropriate writ/directions directing that the Respondent no. 2, i.e. Ld. NCLT should not exceed its jurisdiction and is bound to act within the four corners of the Insolvency and Bankruptcy Code, 2016;

F. Appropriate Writs and/or orders and/or direction do issue as would afford complete relief to the Petitioner;

G. Rule Nisi in terms of the prayers above;

H. Such further or other order or orders be made and/or directions be given as this Hon'ble Court may deem fit and proper.”

2. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner is aggrieved by the impugned order dated 13th December, 2019 passed by the National Company Law Tribunal (NCLT), Principal Bench, New Delhi in CA-2823 (PB)/ 2019 in Petition being No. (IB) -731 (PB)/ 2018 (titled as “ICICI Bank Bank v. Punj Lloyd Ltd.”) which is at annexure P-1 to the memo of this appeal, mainly for the reason that the stay has been granted by the said Principal Bench against the encashment of the Bank Guarantee.

3. Much has been argued out by learned counsel for the petitioner about the jurisdictional error of NCLT, Principal Bench, New Delhi on basis of several sections including Section 3 (31), to be read with Section 14, to be read with Section 60 of the **Insolvency and Bankruptcy Code, 2016** (hereinafter referred to as “**the Code 2016**”)

4. As the impugned order dated 13th December, 2019 passed by the NCLT is an appealable order under Section 61 of the Code, 2016, we are not entering into the merits of the case.

5. This is neither a case that a Labour Court is conducting a criminal case, nor a revenue Court is conducting a labour matter. In such eventuality, it can be said that there is want of jurisdiction.

6. In the facts of the present case, the NCLT, Principal Bench, New Delhi has all power, jurisdiction and authority to decide the case in question.

7. There can be an erroneous order of the NCLT, Principal Bench, New Delhi, but, an efficacious alternative remedy is available with the petitioner by way of statutory appeal under Section 61 of the Code, 2016.

8. Hence, we see no reason to exercise our powers of judicial review vested under Article 226 of the Constitution of India, as there is nothing so special or extraordinary in this case.

9. What is being argued before this Court can always be argued before the National Company Law Appellate Tribunal (NCLAT), which is also available at Delhi.

10. Hence, without entering into the merits of the case, as there is efficacious alternative remedy available with the petitioner and for the following reasons:-

(a) even if there is an erroneous order, on the part of the NCLT, Principal Bench, New Delhi, a statutory appeal is provided under Section 61 of the Code, 2016,

(b) prima facie, there is no violation of the principles of natural justice. Looking to the contentions, it is highly debatable whether without hearing the order was passed or not. That will be clarified by the other side before the appellate forum, and

(c) neither there is a single argument canvassed by the petitioner about the unconstitutionality of any of the provisions of the Code, nor

we find any violation of the fundamental rights as alleged by the petitioner.

11. In view of the aforesaid facts, as an efficacious alternative remedy is available with the petitioner, we are not entertaining this writ petition and the same is disposed of without entering into the merits of the case.

12. As and when an appeal is preferred by the petitioner against the impugned order, all the issues which are raised in this writ petition are hereby permitted to be raised before the Appellate Tribunal, including encashment or otherwise of the Bank Guarantee, independent contract and respondent no. 9 has nothing to do with a separate contract between this petitioner and ICICI bank and others.

13. All these issues are kept open to be decided by the NCLAT. This order should not be read as opining, one way or the other, on any of the contentions of the petitioner regarding the correctness of the impugned order of NCLT.

CM APPL. 55409/2019

1. In view of the order passed in the writ petition, this application is disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

DECEMBER 23, 2019

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