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

+ CM(M) 350/2020 & CM APPLN. 11249/2020

ARVIND KUMAR RASTOGI

..... Petitioner

Through

Mr. Piyush Singh and Mr. Akshay
Srivastava, Advocates

versus

THE NATIONAL COMPANY LAW

TRIBUNAL AND ANR

..... Respondents

Through

Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Shravan Kumar, Advocate for
UOI

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

11.09.2020

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1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 12.05.2020 passed by the National Company Law Tribunal whereby it was mandated that no new petition would be entertained in the National Company Law Tribunal without record of default under Section 7 of IBC, 2016.
3. Learned counsel for the petitioner submits that the High Court of Calcutta by judgment dated 18.08.2020 in W.P.No.5595(W) of 2020 titled "*Univalve Projects Pvt. Ltd vs. The Union of India & Ors.*" and another connected petition has held that NCLT has acted without jurisdiction and exceeded jurisdiction conferred under Section 424 of the Companies Act, 2013 and the said order is in violation of the Insolvency and Bankruptcy Code, 2016. Accordingly, has held the order dated 12.05.2020 as ultra vires the Insolvency and Bankruptcy Code and the regulations framed thereunder

and has struck it down.

4. Learned counsel appearing for the respondents submit that order dated 12.05.2020 was modified by a notification dated 13.08.2020.

5. The notification of 12.05.2020 which has been struck down by the Calcutta High Court reads as under:-

“All concerned are directed to file default record from the Information Utility along with the new petitions being filed under section 7 of Insolvency and Bankruptcy Code, 2016 positively. No new petition shall be entertained without record of default under section 7 of IBC, 2016.

The Authorized Representatives/Parties in the cases pending for admission under aforesaid section of IBC also directed to file default record from Information Utility before next date of hearing.”

6. By the amendment dated 13.08.2020 the National Company Law Tribunal has directed as under:-

“In modification of Order File No. 25/02/2020-NCLT dated 12 May, 2020, it is hereby ordered as under;-

All concerned are directed to file default record from the Information Utility along with the new petitions filed under section 7 of the Insolvency and Bankruptcy Code, 2016 wherever available with the Information Utility.

The Authorized Representatives/Parties in the cases pending for admission under aforesaid section of the IBC are also directed to file default record from the Information Utility wherever available with the Information Utility.”

7. The Notification dated 13.08.2020 was issued prior to the judgment of the Calcutta High Court dated 18.08.2020.

8. In-effect the notification dated 13.08.2020 reiterated the notification of 12.05.2020 issued by NCLT, however modified it to the limited extent

that the default record would be filed wherever available with the Information Utility.

9. Learned counsel for the respondent informed that by a subsequent Notification dated 07.09.2020, Notification dated 13.08.2020 modifying the earlier Notification dated 12.05.2020, which had been struck down by the Kolkata High Court, has been withdrawn.

10. Since the Notification dated 12.05.2020 has been struck down by the Kolkata High Court and Notification dated 13.08.2020 has been withdrawn by the respondent vide Notification dated 07.09.2020, learned counsel for the petitioner further submits that nothing further survives in this petition and accordingly he seeks leave to withdraw the petition.

11. The petition is accordingly dismissed as withdrawn.

12. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 11, 2020
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