

13.04.2021
Court No. 19
Item no.08
CP

C.O. 587 of 2021

Rajiv Agarwalla & anr.
vs.
Mr. Jitendra Lohia & ors.

(via video conference)

Mr. Sidhartha Mitra, Sr. Adv.
Ms. Roopa Seth Mitra

.....for the petitioners.

Ms. Manju Bhuteria

.....for the liquidator.

Ms. Suparna Sardar

...for the opposite parties.

This revisional application arises out of an order dated December 2, 2019 passed by the learned National Company Law Tribunal, Kolkata Bench (hereafter the 'NCLT') in C.P.(IB) No. 695/KB/2017. The petitioners submit that the learned tribunal did not have the jurisdiction to entertain the application under Section 7 of the Insolvency and Bankruptcy Code 2016. By the order impugned a liquidator was appointed with a direction to complete the liquidation process.

According to Mr. Mitra, learned senior advocate for the petitioners, the tribunal lacked the inherent jurisdiction to take up the application which was against a financial service provider. It is submitted

that the petitioners are a non-banking financial company engaged in the business of providing financial services and regulated by the Reserve Bank of India. Reference is made to the definition of financial service provider, corporate person and corporate debtor as provided in the Code. Attention of the court has also been drawn to the Certificate of Registration issued by the Reserve Bank of India.

According to Mr. Mitra, the point of jurisdiction has not been considered at all by the NCLT. Mr. Mitra further draws the attention of the court to an order of the Hon'ble Apex Court dated January 17, 2020, in which, the Hon'ble Apex Court had kept the points of law open while the SLP was dismissed as withdrawn.

Mr. Mitra submits that the superintending power of this court has been invoked on the ground that the order of the NCLT was without jurisdiction as the application was not maintainable and the tribunal lacked jurisdiction over the subject matter. On such grounds the order could be challenged before this court and this court has the power to correct any wrong or error committed by the tribunal. Mr. Mitra further submits that if an order suffers from inherent lack of jurisdiction, the alternative remedy by way of an appeal would not be a bar from entertaining a revisional application.

Ms. Bhuteria, learned advocate appearing on behalf of the liquidator, submits that the point of jurisdiction was not taken when the application was admitted by the NCLT; that in certain earlier proceedings, this point was urged but was not accepted by either the NCLT or by the appellate tribunal on the ground that the contention with regard to lack of jurisdiction ought to have been taken at the first instance which was not taken by the petitioners. Ms. Bhuteria further submits that during the pendency of the proceedings certain actions of the directors of the petitioners/companies were also under challenge before the tribunal and certain directions imposing punishment was also passed. Aggrieved, the petitioners preferred an SLP which was ultimately withdrawn by the petitioners and the Hon'ble Apex Court kept the points of law open. According to Ms. Bhuteria, the said order only related to the order dated November 18, 2019 and the order of the Hon'ble Apex Court was not passed in the main proceedings which is now being challenged before this court.

I have heard the rival contentions of the parties and also find that the petitioners have already approached the National Company Law Appellate Tribunal, New Delhi against the order of the NCLT. I

do not think that parallel proceedings can be allowed.

This revisional application is not entertained. The petitioners are directed to approach the NCLT for a decision on its merits. The point of maintainability has been left open for decision by the learned appellate tribunal. Lack of subject matter jurisdiction can be raised and decided at any stage of the proceeding as it goes to the root of the matter.

With regard to the e-auction, this court finds that a date, i.e., April 30, 2021 has been fixed. As the appellate tribunal is already in seisin of the matter and has denied the interim order in favour of the petitioners, no further restraint order is being passed by this court, save an except that the e-auction may be proceeded with but the final result of the same shall be published with the leave of the learned appellate tribunal.

The learned appellate tribunal is directed to dispose of the appeal along with the application expeditiously. The question of prima facie case and grant of interim order in favour of the petitioners, will be decided on the next date fixed.

The revisional application is disposed of. There shall be no order as to costs. This court has not considered the questions raised and all points

including maintainability of the proceedings will be decided by the learned appellate tribunal.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)