IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1708/2021

Goregaon Siddharth Nagar
Sahakari Griha Nirman Sanstha Ltd. ..... Petitioner

Vs.

State of Maharashtra & Ors. ..... Respondents

Dr. Abhinav Chandrachud a/w. Mr. Dipen Furia I/b. M/s. Shah & Furia Associates for the Petitioner
Mr. Sukanta Karmakar, AGP for the State
Mr. Manish Upadhye, AGP for the State
Ms. Sharmila Deshmukh for Respondent No.2.
Mr. Vishal Kanade I/b. Darryl Pereira for Respondent No.3

CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.

DATED : SEPTEMBER 8, 2021

P.C.

1 Heard. By this petition under Article 226 of the Constitution of India, the Petitioner is seeking direction against Respondent No.2 MHADA to take immediate steps to complete the developments scheme of Siddharth Nagar Patra Chawl, Goregaon (W), Mumbai and hand-over permanent alternate accommodation in the rehab components to the members of Petitioner society. The Petitioner also seeks direction against Respondent No.2 to pay arrears of transit rent to the members of the Petitioner society from the date of default by Respondent No.3 till the

date of filing of the present Writ Petition and further to pay a sum of Rs.40,000/- p.m. (Rs.Forty Thousand only) towards the transit rent to each member of the Petitioner society from the date of filing of the present Writ Petition till the date of handing over their permanent alternate accommodation in the rehab components under the development scheme of Siddharth Nagar Patra Chawl, Goregaon (W),Mumbai.

2 The learned counsel for the Petitioner submits that initially, Respondent No.3 Guruashish Construction Pvt. Ltd. was appointed as a Developer to develop the following land :

SCHEDULE OF THE SUBJECT LAND

ALL THAT piece and parcel of land admeasuring approximately in aggregate 1,93,599.90 square meters and bearing C.T.S. Nos. 260, 260/1 to 260/100, 261, 261/1 to 261/104, 264, 264/1 to 264/296, 265, 265/1 to 265/40, 267, 267/17 to 267/24, 268 (part), 268/45 to 268/86, 347, 347/1 to 347/16, 363 and 363/1 to 363/56 of Village Pahadi Goregaon (West) and C.T.S. Nos. 18A/1, 18A/2, 22, 22/1 to 22/95, 22A/1 to 22A/6, 22A/7A, 22A/7B, 22A/8A, 22A/8B, 22A/9, 22A/10, 22A/11A, 22A/11B, 22A/12 to 22A/15, 23, 23/1 to 23/32, 24, 24/1 to 24/48 and 27 (part) of Village Goregoan, Taluka Borivali, in the Registration District and Sub-District Mumbai Suburban, situate, lying and being at Siddharth Nagar, Goregoan (West), Mumbai - 400 104.

3 The learned counsel for the Petitioner submits that before completion of development, the Union Bank of India had initiated insolvency proceedings against Respondent No.3 being Company Petition NO.1061/ 11/ I&BP/ NCLT/ MAH/ 2017 under the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal and same has been admitted and Mr.Rajendra K Bhuta has been appointed as an interim Resolution Professional for Respondent No.3. In that Insolvency Proceedings against Respondent No.3, Respondent No.2 has unilaterally terminated the tri-party joint development agreement dated 10.04.2008 along with tri-party deed of confirmation and modification deed dated 09.11.2011 with Respondent No.3 on 12.01.2018. Thereafter various suits have been filed by third party developer challenging the termination and same are pending before this court. On 04.09.2020, the National Company Law Tribunal (the “NCLT”) has initiated liquidation of Respondent No.3 and appointed a liquiditor. Thereafter, on 25.10.2020, the Petitioner society lodged its claim in respect of the liquidation of Respondent No.3 under the Insolvency and Bankruptcy Code, 2016. On 10.11.2020, the claim of the Petitioner was allowed by the Liquidator in the sum of Rs.496,26,62,000/- (Four Hundred Ninety Sixty Crores Twenty Six Lacs Sixty Two Thousand only) as the secured creditors and the financial creditors.

4 The learned counsel for the Petitioner submits that as Respondent No.2 MHADA has failed and neglected to take appropriate steps to develop the said plot i.e. R.No.9 and

handover the constructed tenement to the Petitioner, they filed the present Writ Petition.

5 The learned counsel for the Petitioner submits that the NCLT, passed order dated 04.09.2020 ceasing the operation of moratorium declared under section 14 of the said Act. The operative part of the said order dated 04.09.2020 reads thus:

> *"In view of the rejection of the resolution plan, the Corporate Debtor i.e. Guruashish Constructions Private Limited, shall be liquidated in the manner as laid down in Chapter-III of the Code with the following consequential directions:*
>
> *"a) The Applicant herein, Mr Rajendra K. Bhuta, is appointed as the Liquidator.*
>
> *b) He shall issue public announcement stating that Corporate Debtor is in liquidation.*
>
> *c) The Moratorium declared under Section 14 of the IBC 2016 shall cease to operate here from.*
>
> *d) Subject to section 52 of the IBC 2016 no suit or other legal proceedings shall be instituted by or against the Corporate Debtor. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
>
> *e) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.*
>
> *f) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50*

and 52 to 54 of the Code, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.

g) Personnel connected with the Corporate Debtor extend all assistance and cooperation to the Liquidator as will be required for managing Its affairs.

h) The Liquidator shall be entitled to such fees as specified by the Board in terms of Section 34 WC Code.

i) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

j) The Liquidator is directed to comply with request of the MHADA

k) The Liquidator is directed to send a copy of this order to the concerned Registrar of Companies and Insolvency and Bankruptcy Board of India, New Delhi."

6 The learned counsel for the Petitioner submits that in the interest of justice, this Hon'ble Court be pleased to direct Respondent No.2 to start the construction activity immediately and handover the constructed premises to the Petitioners – members and also pay arrears of rental charges. He submits that admittedly, as on today, the possession of the said land / plot R2 is with Respondent No.2 only. He submits that neither the NCLT nor any court has restrained Respondent No.2 from carrying out any construction activity for the Petitioners. In spite of that Respondent No.2 has failed and neglected to start the same. Hence, the present Writ Petition.

7 The learned counsel for the Petitioner submits that even the State Government, by Government Resolution dated 09.07.2021 (Exhibit-M page 591) also directed Respondent No.2 to take immediate steps for constructing the tenements for the Petitioner and the payment of arrears of rent. In spite of Government Resolution dated 09.07.2021 Respondent No.2 has failed and neglected to take steps. Hence, in the interest of justice, this Hon'ble Court be pleased to direct Respondent No.2 to take immediate steps and start construction activity.

8 The learned counsel for the petitioner submits that though the matter is pending before the NCLT, this court can pass order under Article 226 of the Constitution of India. In support of his contention, he relies on the judgments in the matter of ;

> *"(i)* ***Rajendra K. Bhutta (2020) 13 SCC 208,*** *particularly. Paragraph 25 which reads thus:*
>
> *There is no doubt whatsoever that important functions relating to repairs and re-construction of dilapidated buildings are given to MHADA. Equally, there is no doubt that in a given set of circumstances, the Board may, on such terms and conditions as may be agreed upon, and with the previous approval of the Authority, handover execution of any housing scheme under its own supervision. However, when it comes to any clash between the MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed*

unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze that has thus been made is, unlike its predecessor in the SICA, 1985 only a limited one, which is expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition up to the date that the Adjudicating Authority either allows a resolution plan to come into effect or states that the corporate debtor must go into the liquidation. For this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet albeit with a new management."

(ii) ***Alchemist Asset Reconstruction Co. Vs. Hotel Gaudavan Pvt. Ltd. (2018) 16 SCC 94. Paragraph 5 and 6 :***

"(5) This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law.

(6) Mr. Jayant Bhushan, learned Senior Counsel, also informs us that criminal proceeding being F.I.R. No. 0605 dated 06.08.2017 has been taken in a desperate attempt to see that the IRP does not continue with the proceedings under the Insolvency Code which are strictly time bound. We quash this proceeding."

(iii) ***Ghanshyam Mishra & Sons Vs. Edelweiss Asset Reconstruction Co. 2021 SCC Online 313.*** *Paragraph 129 reads thus:*

"(129) As held by this Court in catena of cases including in the cases of Babu Ram Prakash Chandra Maheshwari vs. Antarim Zilla Parishad Muzaffar Nagar37, Whirlpool Corporation vs. Registrar of Trade

Marks, Mumbai & Ors.38, Nivedita Sharma vs. Cellular Operators Association of India & Ors.39, Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Others40 and recently in the case of Kalpraj Dharamshi (supra), that non-exercise of jurisdiction under Article 226 is a rule of self-restraint. It has been consistently held, that 37 (1969) 1 SCR 518 38 (1998) 8 SCC 1 39 (2011) 14 SCC 337 40 (2020) 13 SCC 308 the alternate remedy would not operate as a bar in at least three contingencies, namely, (1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights; (2) where there has been a violation of the principle of natural justice; and (3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

(iv) **Pushpa Shah Vs. Union of India & Ors. 2019 SCC Online Bom 2385**. Paragraph Nos.7 to 9 read thus:

"7. *The petitioner is impugning Section 231 of the IB Code in so far as by use of words "**any Court**" without any further clarification, it imposes fetter in exercise of jurisdiction and powers conferred by the Constitution vide Articles 32 and 226 upon the Constitutional Courts.*

8. *Section 231 of the IB Code reads as follows:*

> ***"231. Bar of jurisdiction*** *- No civil Court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code."*

9. *In our prima facie opinion, the words "**any Court**" cannot be construed to include High Court or Supreme*

Court. Hence, the Constitutional Court can grant injunction in appropriate cases. If the words "any Court" is construed to include Constitutional Court, then, the same would be in violation of the basic structure of the Constitution. In this regard, reference can be made to the decision of the Constitutional Bench in L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 and especially observations made in paragraph 99 which reads as follows:

"99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the *manner we have indicated."*

(v) **Canara Bank Vs. Deccan Chronicle Holdings Ltd. 2017 SCC Online NCLAT 255**. Paragraph 6 and 7 thereof read thus:

"6. From clause (a) of sub-Section (1) of Section 14, it is clear that institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order by any court of law, tribunal, arbitration panel or other authoritycome withinthe purview of 'moratorium. The said provisionspecifically do not excludeany Court, including the Hon'ble High Courts or Hon'ble Supreme Court of India.

7. There is no provision to file any money suit or suit for recovery before the Hon'ble Supreme Court except under Article 131 of the Constitution of India where dispute between Government of India and one or more States or between the Government of India and any State or States on one side and one or two or more States is filed. Some High Courts have original jurisdiction to entertain the suits, which may include money suit or suit for recovery of money. The Hon'ble Supreme Court has power under Article 32of the Constitution of India and Hon'ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that 'moratorium' will notaffect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of 'moratorium, under Section 14 of the I&B Code."

(vi) Embassy Property Development Pvt. Ltd. Vs. State of Karnataka (2020) 13 SCC 308.

9 The learned counsel for the Petitioner submits that even the Apex Court in the matter of ***M/s. Shantistar Builders Vs. (1990) 1 SCC 520*** held that the shelter is a fundamental right of the citizen and that they are entitled to.

10 On the basis of these submissions and the authorities, the learned counsel for the Petitioners submits that though the matter is pending before the NCLT and the Liquidator has been appointed, this court can direct Respondent No.2, who is in possession of plot No.9R to construct the tenements and handover possession to the Petitioners members and also to pay the arrears of rent. He submits that if the said prayer is not granted, irreparable loss will be caused to the Petitioners.

11 On the other hand, the learned counsel for the Respondents have vehemently opposed the Writ Petition. They submits that in the present proceedings, a Liquidator has been appointed and the matter is pending before the NCLT. They submit that the Petitioners have also filed their claim on 03.10.2020 before the Liquidator. They submit that in that claim petition, the Petitioners have also claimed the arrears of rental compensation as well as the permanent alternate accommodation. They submit that the said claim petition is pending for hearing on its own merits. They submit that the Liquidator has filed Application dated 20.11.2020 before the NCLT, Mumbai being I.A. No.2377/2020 under section 60(5) read with section 36(3) of the said Act for the purpose of obtaining possession of the

said land / property forming part of the liquidation with the following reliefs:

> *"A. Property belonging to and vested in the Corporate Debtor at the Insolvency Commencement dated i.e. 24th July, 2017 namely the property bearing CTS Number 260, 260/1 to 100, 261, 261/1 to 104, 264, 264/1 to 296, 265, 265/1 to 40, 267, 267/17 to 24.268 (part), 268/45 to 86, 347, 347/1 to 16, 363, 363/1 to 56 of village pahadi, Goregaon and bearing C.T. Survey nos 22, 22/1 to 95., 23, 23/1 to 32, 24, 24/1 to 48 and 27(part) of village Pahadi Goregaon, Maharashtra admeasuring 47 acres i.e. 1,65,800 sq. mtr. shall comprise as the Liquidation Estate. Accordingly, based on the contractual commitments, the Applicant / Liquidator be authorised to take control, custody and possession of the entire plot of land and consider the claim & obligations of MHADA and the Society under the contract in the liquidation process.*
>
> *B. The Respondent nos. 2 & 3, be directed to continue to extend full co-operation to the Applicant/Liquidator in the Liquidation process of the Corporate Debtor Guruashish Construction Pvt. Ltd*
>
> *C. Since the rights of development under Free Sale Component are development rights of Guruashish, and Project Meadows is developed by the Guruashish under Free Sale Components. Which has 610 residential flats and commercial complex, out of 610 residential flats 465 flats are already sold, the project is a security for the loan sanctioned by Union Bank of India, Punjab & Maharashtra Co-operative Bank Limited and ILFS. All the plots other than R1 to R5 and R9 which are demarcated to MHADA and Society respectively be allowed to be under the control and custody of the Applicant to be part of liquidation Estate. The proceeds of Liquidation Estate will be utilized to satisfy the claims of Flat Owners of Meadows Project, Society, and MHADA.*
>
> *D. The Goregaon Siddharth Nagar Sahakari Griha Nirma Sansthan Ltd has lodged its claim with the*

> *liquidator under Form D as Secured Financial Creditor for the Corpus Fund amounting to Rs 25 Crores, Monthly compensation payable to 631 members amounting to Rs 133.26 Crores and amount of Rs. 337.06 crore to construct and handover permanent alternative accommodation to the members of the Society. Liquidator is seeking the direction that Plot R9 may be handed over to the Society to commence the work at the earliest to complete the project so that Society can hand over the flats to respective members. Liquidator may be allowed to handover the plot R9 to the Society. The realization and distribution of proceeds of liquidation estate may take time for which project of Society may not be delayed.*
>
> *F. Since MHADA has taken the possession of inventory of material on 5th April, 2018 as per list, MHADA be directed to release the inventory of goods as the same is forming part of liquidation estate.*
>
> *E. Issue such other necessary orders/directions as nature of the present matter deems fit and proper"*

12 The learned counsel for the Respondent submits that the said Application is also pending for hearing on merits.

13 The learned counsel for the Respondent has also submits that the MHADA has filed Interim Application No.2333/2020 for declaration that the said property is owned by MHADA including right to develop the same, with the following prayers :

> *"(a) That this Hon'ble Tribunal be pleased to decalre that the Property owned by the Applicant MHADA including any right or interest arising out of or incidental to the said Property bearing City Survey No: (1) 18A/1, 18A/2, 22A/1 to 22A/6, 22A/7A, 22A/7B, 22A/8A, 22/8B, 22A/9, 22A/10, 22A/11A, 22A/11B, 22A/12 to 22A/15. AND (ii) 260/1, 260/2, 260/3A, 260/3B, 260/4, 260/5A, 260/5B, 260/6, 260/7A, 260/7E, 260/8, 260/9A, 260/9B, 260/10 to*

260/19 of Village Pahadi, Goreagaon, Taluka Borivali does not constitute an "asset" of the Corporate Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 for the purpose of liquidation and distribution under the provisions of Section 36 and Section 53 of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(b) That this Hon'ble Tribunal be pleased to direct the Liquidator to exclude the said Property owned by the Applicant from the liquidation process initiated in respect of the Corporate Debtor and to exclude the said Property from the Liquidation Estate and Asset Memorandum formed by the Liquidator.

(c) That pending the hearing and final disposal of the present application, the Liquidator be directed by an order of this Hon'ble Tribunal to cease and desist from taking any coercive action for the purpose of taking control or custody of the said Property.

(d) That pending the hearing and final disposal of the above application, this Hon'ble Tribunal be pleased to stay the process of liquidation qua the said Property owned by MHADA.

(e) That pending the hearing and final disposal of the above application, the Liquidator be restrained by an order of this Hon'ble Tribunal from alienating, encumbering, creating any third party rights or dealing in any manner whatsoever with the said Property owned by MHADA.

(f) For ad interim relief in terms of prayer clause (c), (d) and (e) above.

(g) For such other and further relief as this Hon'ble Court may in the nature and circumstances of the case deem fit and proper."

14 The learned counsel for the MHADA submits that though the Government has issued Notification dated

09.07.2021 directing them to take appropriate steps for constructing the tenements for the Petitioners – members and also to pay arrears of rental compensation, but it has been specifically stated that the same shall be done within four corners of law, subject to the orders passed by the NCLT and/or any other Authority.

15 The learned counsel for the MHADA submits that, hence, they preferred an Application before the NCLT seeking permission to develop the said property so that they can handover vacant and peaceful possession of the tenements to the members of the Petitioners and also to clear their arrears of rental compensation.

16 The learned counsel for the Respondent submits that as the matter is already pending before the NCLT and the next date is 20.09.2021, there is no question of allowing the Writ Petition directing the MHADA to construct the tenements and handover vacant and peaceful possession to the Petitioners - members and also to clear the arrears of monthly compensation. They submit that in view of pendency of the matter before the NCLT and the Respondent's Application for taking possession of the entire property, there is no question of allowing the Writ Petition. They submit that in the interest of justice, this Hon'ble Court be pleased to dismiss the Writ Petition with costs.

17 It is to be noted that the issue involved in the Writ Petition is whether the Petitioners – members are entitled direction to develop the said property and handover the

vacant and peaceful possession to the Petitioners – members and also to clear the arrears of monthly compensation through the Respondent MHADA. Admittedly, in the present proceedings, the matter is pending before the NCLT against Respondent No.3 and the Liquidator has already been appointed. After appointment of Liquidator, he has made an Application for taking possession of the entire property. It is interesting to note that in liquidator's Application, it is specifically stated that the Petitioners have lodged their claim with the Liquidator in Form-D as the secured financial creditor for the corpus fund amounting to Rs.25,00,00,000/- (Rs. Twenty Five Crores only), monthly compensation payable to 631 members of the Petitioners, amounting to Rs.133.26 crores and amount of Rs.337.06 Crores to construct and handover permanent alternate accommodation to the members of the Petitioner. The Liquidator is also seeking direction in his Application that plot No. R9 may be handed over to the Petitioner society to commence the work at the earliest to complete the project so that the society can handover the flats to respective members. The Liquidator has also sought permission from the NCLT to allow him to handover plot R9 to the society. This itself shows that the claim of the petitioners is pending before the NCLT and during pendency of the said claim,the Petitioners have filed present Writ Petition for the same relief. There is no doubt, under Article 226 of the Constitution of India, the court can take appropriate decision in the interest of justice. But in the case in hand, the matter is pending before the NCLT in which the Liquidator has already filed Application seeking permission to handover the possession of plot No.R9 to the Petitioners society for carrying out the construction and also to make the payment of arrears of rental compensation. Not only that, the Respondent MHADA has also made an Application to carry out construction so that they can handover vacant and peaceful possession of the tenements to the members of the Petitioners along with arrears of rental charges. Apart from that the next date before the NCLT is 20.09.2021. Therefore, as an alternate efficacious remedy has already been availed by the Petitioners by filing claim petition before the Liquidator, we do not find any reason to entertain the Writ Petition against under Article 226 of the Constitution of India.

18 Undisputedly, every citizen has a fundamental right of shelter as declared by the Apex Court in the M/s. Shantistar Builders (supra). At the time of passing the order for shelter, we have also to see that the order should be within four corners of law. In the case in hand, similar issue has been involved before the NCLT and therefore, there is no question of entertaining the Writ Petition.

19 Even the Apex Court, in the matter of ***The Assistant Commissioner of State Tax and Ors. Vs. M/s. Commercial Steel Limited in Civil Appeal No.5121/2021*** dated 03.09.2021 held that if alternate efficacious remedy is available, there is no question of entertaining the Writ Petition under Article 226 of the Constitution of India. , except if there is a breach of fundamental rights, a violation of principles of natural justice, an excess of jurisdiction or a

challenge to the vires of the statute or delegated legislation. Paragraph 11 and 12 of the said order read thus:

> *"11 The Respondent had a statutory remedy under section 107. Instead of availing of the remedy, the Respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a Writ Petition can be entertained in exceptional circumstances where there is :*
>
> *(i) a breach of fundamental rights;*
> *(ii) a violation of the principles of natural justice;*
> *(iii) an excess of jurisdiction; or*
> *(iv) a challenge to the vires of the statute or delegated legislation.*
>
> *12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a Writ Petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the Respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the Respondent."*

20 It is to be noted that in the case in hand, the Petitioner has already made an application before the NCLT for their rights and that application is pending for hearing and final disposal on merits. Apart from that, there is no question of any breach of fundamental rights and / or violation of principles of natural justice. Hence, we do not find any reason to entertain the present Writ Petition.

21 In view of these facts, the following order is passed:

(a) The Writ Petition stands dismissed.

(b) All contentions of the parties are kept open for being agitated before the NCLT.

(c) No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.) **(K.K.TATED, J.)**