

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6850 of 2021

V.Nagarajan ... Petitioner

Vs.

1. Asset Reconstruction Company (India) Ltd
(in its Capacity as Trustee of Arcil AST-1 Trust)
Having its Registered office at
The Ruby 10th Floor
29 Senapathy Marg, Dadar (West)
Mumbai 400028
 2. J.M.Finacncial Asset Reconstruction Co.Ltd
Rep. by its Senior Vice President
Third Floor B Wing Suasish IT Park,
Plot No.68E, Off. Dattapada Road
Opp. TATA Steet
Borivali, Mumbai 400066
 3. Insolvency and Bankruptcy Board of India
7th floor Mayur Bhawan
Shankar Market Connaught Circus
New Delhi- 110 001.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to quash the order dated 29.01.2021 passed by the National Company Law Tribunal MA/457/2018.

For Petitioner	:	Mr.R.Subramanian
For Respondents	:	Mr.M.S.Krishnan, Senior Counsel for Ms.Abitha Babu, for first respondent

Mr.K.S.Jeyaganesan,
for third respondent

ORDER
(Made by the Hon'ble Chief Justice)

The petitioner was appointed as the liquidator over a corporate debtor. The admitted position is that the tenure of the petitioner's engagement had expired. The petitioner questions the propriety of an order passed by the National Company Law Tribunal on January 29, 2021 at the behest of the first respondent secured creditor of the concerned company.

2. It appears that the first respondent was attempting to proceed against its secured assets, but was facing impediments from the petitioner herein who was seeking to rope in all assets of the corporate debtor for sale and rateable distribution. It was in such circumstances that the first respondent was constrained to approach the NCLT by way of a miscellaneous application.

3. By the order impugned dated January 29, 2021, the NCLT has restrained the petitioner herein from dealing with the assets of the corporate debtor till such time that the petitioner's application for extension of his tenure as the liquidator is allowed. Such application is pending and the parties say that it is slated to be taken up on April 22, 2021.

4. A preliminary objection has been taken by the first respondent secured creditor. According to the secured creditor, the order impugned is amenable to an appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016.

5. The petitioner says that the fact that an appeal lies against an order does not preclude the person aggrieved by the relevant order to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. The petitioner refers to the known exceptions when the order is passed in contravention of the principles of natural justice or in error of jurisdiction or is manifestly unjust, the Writ Court may be approached. The petitioner seeks to make out a case that the petitioner was not adequately or meaningfully heard or given an opportunity to present the petitioner's case by the NCLT.

6. A mere reading of the impugned order indicates that the petitioner was represented and was heard. In such a scenario, the petitioner's contention that the order was passed in breach of the principles of natural justice cannot be accepted. Since it is elementary that the NCLT did not lack the authority to

pass the order and it is the merits of the order which are sought to be gone into, the petitioner should choose the appellate remedy.

7. Accordingly, W.P.No.6850 of 2021 is disposed of, without going into the veracity of the order impugned, on merits. However, the NCLT is requested to deal with the petitioner's application for extension of the petitioner's tenure as expeditiously as possible and within a reasonable time of April 22, 2021 when the matter is next listed before such forum.

8. In the event the petitioner seeks to prefer an appeal from the order impugned before the National Company Law Appellate Tribunal, it will be open to the petitioner to seek exclusion of the time spent in this Court. However, the discretion to allow such exclusion rests completely with the NCLAT.

9. There will be no order as to costs. Consequently, W.M.P.Nos.7404 and 7407 of 2021 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kpl

+lcc to K.S.Jeyaganeshan, Advocate, SR.No.22321.

W.P.No.6850 of 2021

CP(CO)
CSR 28.04.2021