

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

RVWO No. 5 of 2021

**Arising out of
WPO No. 11 of 2021**

D & I Taxcon Services Pvt. Ltd.

VS.

National Company Law Tribunal and another

For the petitioner : Mr. Tapass Dutta

For the respondents : Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal

Hearing concluded on : 20.12.2021

Judgment on : 10.01.2022

The Court:

1. The present review application has been filed seeking review of the order dated February 1, 2021 passed in WPO No.11 of 2021.
2. By the said order, this Court had dismissed the writ petition as not maintainable, with liberty to the petitioner to approach the appropriate appellate forum for ventilating its grievance.
3. The first ground of review is that an appeal was maintainable against the orders challenged in the writ petition under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') and not under Section 421(1) of the Companies Act, 2013 (for short, 'the 2013 Act') as held. As far as such argument is concerned, an observation was recorded in the order under review, to the effect

that Section 421(1) of the 2013 act specifically stipulates that any person aggrieved by “an order” of the Tribunal may prefer an appeal to the Appellate Tribunal. However, ultimately the writ petition was dismissed as not maintainable, with liberty to the petitioner to approach the “appropriate appellate forum” for ventilating its grievance.

4. Section 61 of the Code provides for an appeal against an order passed by the Adjudicating Authority, i.e., the National Company Law Tribunal (in brief, ‘the NCLT’) in respect of matters covered by Part II of the Code, which deals with insolvency resolution and liquidation for corporate persons. Section 4 of the Code stipulates that Part II shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.
5. Section 421(1) of the 2013 Act, on the other hand, contains a sweeping provision of appeal against all orders of the NCLT.
6. Three orders were challenged in the writ petition. By the second order dated February 21, 2020, the NCLT had dismissed MISC-A (IB) No.158/KB/2020 for want of prosecution. The petitioner had prayed for recall of an earlier order dated December 19, 2019 by way of the said application.
7. The first impugned order dated December 19, 2019 recorded that the petitioner’s application bearing CP (IB) No.602/KB/2019 was dismissed on merit, as the applicant was absent at the time of call.

8. By the third impugned order dated December 9, 2020, IA (IB) No.390/KB/2020, filed by the petitioner, was also dismissed for non-prosecution due to absence of representation on the part of the petitioner.
9. Although it has been mentioned in the writ petition that the petitioner had filed application No.602/KB/2019 for a direction on the liquidator to adjudicate the proof of claim filed on November 21, 2017, it was neither pleaded clearly nor indicated in the writ petition bearing WPO No.11 of 2021, as to whether the matter arose from a proceeding under Part II of the Code, which relates to insolvency and liquidation of corporate debtors where the minimum amount of default is one lakh rupees.
10. In any event, Section 421(1) of the 2013 Act is the residuary provision for appeal and applies to all orders which are not appealable otherwise, including under Section 61 of the Code.
11. In view of there being no clear indication and/or pleading in the writ petition to that effect, it was held in the order under review dated February 11, 2021 that Section 421(1) of the 2013 Act stipulates a provision for appeal to the Appellate Tribunal.
12. However, the writ petition was ultimately dismissed as not maintainable, with liberty to the petitioner to approach the “appropriate appellate forum” for ventilating its grievance. As such, no specific appellate forum was specified for the petitioner to approach. Although Section 421(1) was mentioned in the previous paragraph of the said order, the said order of this Court could not

confer or curtail a right of appeal, if otherwise provided in law. As such, the outcome of the writ petitioner would be the same if, instead of Section 421(1) of the 2013 Act, Section 61 of the Code was mentioned as alternative remedy.

- 13.** As such, there is no scope of review of the order merely on the basis of the finding that an appeal lay under Section 421(1) of the 2013 Act.
- 14.** It is seen from the writ petition that the petitioner challenged two orders of dismissal for default and one order passed by the NCLT on merits on factual grounds, alleging irregularities and non-compliance of Rule 44 of the NCLT Rules, 2016 by the NCLT.
- 15.** It is well-settled that allegations on fact as to what transpired in Court on certain particular dates have to be levelled, for the ends of propriety, before the said Court itself, where the irregularity allegedly occurred, preferably before the same Presiding Officer. A challenge before a superior forum, including under Article 226 of the Constitution of India, is illusory in nature, since it is most appropriate that the forum concerned itself, being in the best position to ascertain the veracity of such factual allegations, adjudicates such factual disputes.
- 16.** Hence, the mere allegation of violation of Rule 44 of 2016 Rules could not be sufficient justification for this Court to invoke the writ jurisdiction.

17. An appeal, either under Section 421(1) of the 2013 Act or under Section 61 of the Code, would be a more efficacious and exhaustive remedy available to the petitioner in comparison to the writ petition.
18. As far as the judgments cited by the petitioner in connection with the review application are concerned, those primarily indicate that the availability of an appeal is not an absolute bar in exercising the writ jurisdiction of the High Court under certain circumstances; for example, where the writ petition seeks enforcement of a fundamental right or there is violation of natural justice or the proceedings are wholly without jurisdiction or the *vires* of an act is challenged and/or the proceedings themselves are an abuse of the process of law and/or arbitrary, this Court can interfere in its writ jurisdiction despite the availability of an alternative remedy.
19. In the present case, however, the entire gamut of the petitioner's allegations in the writ petition revolved around specific factual allegations which ought to have been decided by the NCLT itself. Moreover, since all the impugned orders had been passed in the absence of the petitioner, who failed to avail the opportunity of being represented before the NCLT, there is extremely limited scope of entering into the nitty-gritties of such factual allegations within the constraints of the writ jurisdiction.
20. In such view of the matter, the order under review cannot be subjected to a review on the ground of error apparent on the face of the record, simply because there is no such apparent error in the impugned order which can be decided at the first blush without

looking into the materials annexed to the writ petition and the connected records of the proceeding before the NCLT. In any event, the factors alleged in the review application could not, in any manner, have altered the outcome of WPO No.11 of 2021 from that as recorded in the impugned order under review.

- 21.** Hence, there is no merit in the review application and RVWO No.5 of 2021 is dismissed without, however, any order as to costs.
- 22.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)