

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.19374 of 2022
(Through hybrid mode)**

***M/S. Nayagarh Cooperative Sugar
Industries Ltd., Nayagarh***

Petitioner

Mr. Debendra Kumar Dwibedi, Advocate

-versus-

***Nayagarh Sugar Complex Ltd.,
Khurda and others***

Opposite Parties

Mr. Durga Prasad Nanda, Senior Advocate
for O.P.1

Mr. Lalit Maharana, Advocate
for O.P.2

CORAM: JUSTICE ARINDAM SINHA

**ORDER
25.08.2022**

Order No.

- 02.** 1. Mr. Dwibedi, learned advocate appears on behalf of petitioner and submits, his client is respondent in the arbitration reference having made counter claims against the corporate debtor/claimant. He draws attention to order dated 12th December, 2021, whereby there was declaration of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016, in respect of opposite party no.1 (corporate debtor). He submits, prayer in the petition is for quashing order dated 8th July, 2022 passed in the reference, thereby holding that it can be continued with in spite of the declaration.
2. Mr. Nanda, learned senior advocate appears on behalf of opposite party no.1. He submits, the writ petition is not maintainable as judicial

intervention is limited by section 5 in Arbitration and Conciliation Act, 1996. Without prejudice, he supports the view expressed in impugned order by reliance on clause(a) under sub-section (1) in section 14. He submits, the prohibition is only on actions against the corporate debtor.

3. Mr. Maharana, learned advocate appears on behalf of the Resolution Professional (RP). He draws attention to his client's letter dated 10th March, 2022 addressed to Chairman of opposite party no.1. He relies on following in the letter, reproduced below.

“Accordingly, in view of the above, we once again request you to handover the control & custody of the said premises along with the detailed inventory & videography, as was prepared by you at the time of seizure, at the earliest possible, to enable us for smooth conduct of the Corporate Insolvency Resolution Process.”

Mr. Nanda disputes the allegation.

4. There is no dispute that there has been declaration of moratorium. There is also no dispute, as Court has ascertained, petitioner has counter claims against the corporate debtor in the reference. There is no law, which provides for proceeding with a reference piece meal. The moratorium applies. That being said, it is not necessary to go into the supplementary dispute as to whether management of the corporate debtor has been handed over to the RP.

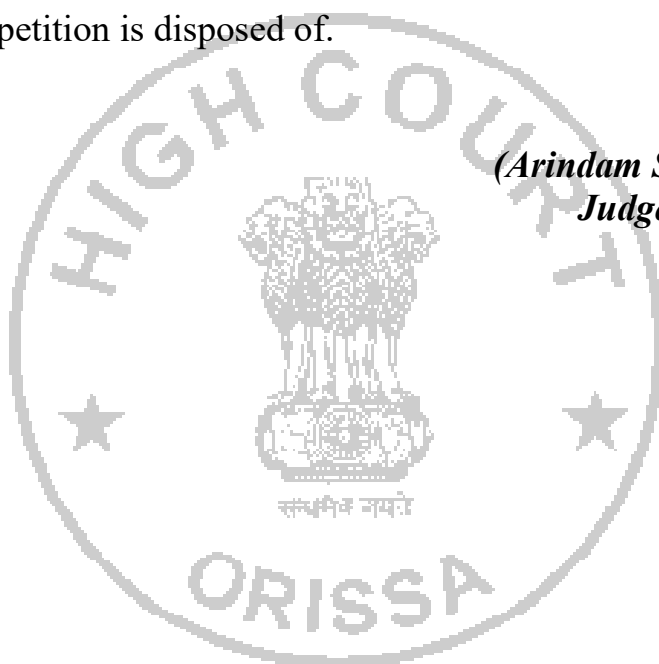
5. The writ petition is found to be maintainable as because there is no

remedy provided in the 1996 Act for the situation, arisen on the reference proceeding in spite of the moratorium. Judicial review therefore is necessary.

6. The reference, in which impugned order was passed, will remain stayed till subsistence of the declaration of moratorium. In event, thereby, the mandate expires, parties to the reference will find their remedy for extension of the mandate, as and when the occasion arises.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge



Prasant