



W.A.No.448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

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Felguera Gruas India Private Limited,
through its Authorized representative

G.Vamsi Krishna,

Having its registered office atL

Door No.10-50-24/A, 3rd & 4th Floor,

Opp. HSBC Call Centre,

Siripuram Junction,

Vishakhapatnam-530 003.

.. Appellant

VS

1.Union of India,

Ministry of Ports, Shipping and Waterways,

through its Secretary,

Parivahan Bhawan 1,

Parliament Street,

New Delhi-110 001.

2.V.O.Chidambaranar Port Trust,

through its Chairman,

3B, World Trade Ave, Harbour Estate,

Turicorin beach Road Salt Pans, Thoothkudi,

Tamil Nadu – 628 004.



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3.Tuticorin Coal Terminal Private Limited,
through its Resolution Professional
(Dhiren Shantilal Shah)
Having its Registered Office at:
B-102, Bhagirathi Niwas, Near Natraj Studio,
Sir M V Road, Andheri – East,
Mumbai-400 069.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the
order dated 24.01.2022 passed in W.A.No. SR 1578 of 2022.

For the Appellant : Mr.Vineet Tajal
for M/s.K.Harishankar

For the Respondents : Mr.A.R.Sakthivel
Standing Counsel
for respondent No.1

: Mr.R.Venkata Varadan
for Mr.Saai Sudharsan
Sathiyamoorthy
for respondent No.2

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This writ appeal is directed against the order dated
24.01.2022 passed in W.P.No. SR 1578 of 2022.



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2. Brief facts are that pursuant to a competitive bidding process undertaken by the second respondent for development of North Cargo Berth-II for handling bulk cargoes at Tuticorin Port on design, build, finance, operate and transfer basis, the consortium of ABG-LDA Bulk Handling Private Limited and Louis Dreyfus Armateurs SAS emerged as successful bidder. The second respondent entered into a concession agreement dated 11.9.2010 with the third respondent, a special purpose vehicle constituted by the said consortium for executing the works under the concession agreement on certain agreed terms. Due to default, one of the financial creditors of the third respondent, namely, Bank of India, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 [for brevity, "IBC"] before the National Company Law Tribunal [for short, "NCLT"]. By the order dated 20.2.2020, the NCLT declared the moratorium in terms of Section 14 of the IBC and appointed an Interim Resolution Professional, which was later confirmed by the NCLT.



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3. According to the appellant, pursuant to the Corporate Insolvency Resolution Process [CIRP], the appellant, being one of the creditors of the third respondent, informed its interest to take over the functioning of the third respondent by submitting a resolution plan. The second respondent Port did not accept the plan submitted by the appellant, but due to the involvement of NCLT in the matter, the appellant was called upon to submit its resolution plan. Despite submission of resolution plan and deliberation, the second respondent did not involve the appellant and finally, the second respondent informed its inclination not to accept the resolution plan of the appellant, which necessitated the appellant to file the writ petition for issuance of a writ of mandamus directing respondents 1 and 2 to consider and agree to the terms of the concession agreement, as provisioned and mentioned in the appellant's resolution plan and further to direct the resolution professional to not proceed with the CIRP concerning the third respondent, including its liquidation.

4. The Registry has questioned the maintainability of the writ



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petition by raising the following objection:

"As per the averment of the affidavit the subject matter and the relief sought therein relates to Insolvency and Bankruptcy Code and also an order has already passed by the NCLT, Mumbai Bench vide order dated 20.02.2020 in the subject matter for initiating Corporation Insolvency Resolution Process (CIRP) which has been filed by the Bank of India against the 3rd Respondent and therefore it may be clarified as to how this Writ Petition is maintainable by seeking parallel orders under Article 226 Constitution of India and also in WMP Petition as stated above."

5. The writ petition was listed under the caption "*for maintainability*" on 24.1.2022. The learned Single Judge heard the appellant on the maintainability of the writ petition and also merits of the claim made in the writ petition and finally rejected the writ petition at SR stage itself holding as under:

"12. Filing of petition before NCLT for certain relief and in the absence of any affirmative relief granted by NCLT, the petitioner cannot file the present petition before this Court for a direction to



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the 2nd respondent to consider and agree to the terms of the Concession Agreement as provisioned and mentioned in the petitioner's resolution plan and to direct the Resolution Professional to not proceed with the Corporate Insolvency Resolution Process concerning the 3rd respondent. Such a direction from this Court would be nothing but encroaching upon the powers and domain of NCLT, which this Court cannot do. The present petition at the behest of the petitioner is therefore not maintainable and, accordingly, the petition is rejected at the SR stage itself."

6. Aggrieved by the same, the appellant has filed the present writ appeal.

7. Assailing the impugned order of the learned Single Judge, learned counsel appearing for the appellant submitted that the appellant, being a company incorporated under the provisions of the Companies Act, 1956 with its registered office at Door No.10-50-24/A, 3rd and 4th Floor, Opp. HSBC Call Centre, Siripuram Junction, Vishakhapatnam, is engaged in the business of carrying out turnkey



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projects in infrastructure sector across India and offering end to end services in design, testing, commissioning, manufacturing, sourcing, supply and construction. The third respondent – Tuticorin Coal Terminal Private Limited has undertaken North Cargo Berth-II Project for handling of coal and other bulk cargo at the second respondent/Port through its resolution professional appointed in CIRP under the IBC.

8. Learned counsel further submitted that the appellant is a major operational creditor of the third respondent having more than 10% of the total operational debt arising out of the contract works for supply and services. The appellant along with Duro Felguera SA submitted a resolution plan in the CIRP of the third respondent. On 16.2.2021, the appellant submitted its resolution plan to the resolution professional. Apart from the appellant, there was only one other prospective resolution applicant, who had submitted its resolution plan which is borne out from the 15th Minutes of Meeting of the Committee of Creditors [for short, "CoC"] held on 17.02.2021. But in its 28th Meeting held on 1.7.2021, the CoC summarily



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rejected the appellant's resolution plan.

9. At this juncture, learned counsel for the first respondent submitted that aggrieved by the rejection, the appellant has filed Application, being I.A.No.1685 of 2021, before the NCLT and the same was later on dismissed as infructuous on 6.4.2022.

10. Learned counsel for the appellant continuing his arguments submitted that the appellant thereafter addressed its grievance through e-mail dated 3.9.2021 to the resolution professional, followed by another e-mail on 6.9.2021. On 15.9.2021, the appellant sent yet another e-mail to the resolution professional requesting them to further entreat the second respondent to provide permission to the officials of the appellant to visit the site. On 14.10.2021, the appellant once again requested the resolution professional to organise a meeting with the officials of the second respondent so as to expedite the process. However, till date, there was no response.



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11. It is also the submission of learned counsel for the appellant that despite the efforts put in by the appellant, the second respondent had expressed their inability to provide any concession/waiver with respect to the terms of the concession agreement and the second respondent also refused to have a meeting with the appellant. The said aspect came to be informed by the resolution professional in the 34th Meeting of CoC held on 30.10.2021.

12. The learned counsel for the appellant added that the appellant has submitted a revised resolution plan and also given a presentation thereof to the CoC in the Meeting held on 9.11.2021, which was also attended by the second respondent. Pursuant to the said presentation, the appellant requested the second respondent to provide its approval to the terms of the resolution plan pertaining to the concession agreement. However, the second respondent informed that they did not have the authority to make changes to the concession agreement. Therefore, the appellant was constrained to file the writ petition for the relief stated supra.



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13. Learned counsel urged that the learned Single Judge on the premise that the matter is still seized of by the NCLT relating to the affairs of the third respondent concern, dismissed the writ petition holding that the appellant cannot file the present writ petition for a direction to the second respondent to consider and agree to the terms of the concession agreement. According to learned counsel for the appellant, the said approach adopted by the learned Single Judge is unfair and unacceptable. He submits that when the appellant cannot go before the NCLT for the relief sought for in the writ petition, the prayer of the petitioner in the writ petition ought to have been allowed. Moreover, when CoC, in its 28th Meeting held on 1.7.2021, summarily rejected the appellant's resolution plan, there is no need or necessity for the appellant to approach the NCLT. Therefore, the prayer in the writ petition deserves to be accepted and, thus, the order of the learned Single Judge is liable to be set aside.

14. Learned counsel appearing for the second respondent submitted that the learned Single Judge, in paragraphs 11 and 12,



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has rightly observed that the matter is seized of by the NCLT relating to the affairs of the third respondent concern and a moratorium has been declared by the NCLT as per Section 14 of the IBC. He would submit that all the issues in respect of the third respondent qua the subject matter have to be dealt with only by the NCLT and not by the High Court and, therefore, the learned Single Judge has rightly rejected the writ petition as not maintainable.

15. Heard learned Standing Counsel appearing for the first respondent Union of India, who supports the argument of the learned counsel for the second respondent.

16. We have considered the rival submissions and also perused the materials available on record.

17. Learned counsel appearing for the appellant has not answered the objection raised about the maintainability of the writ petition and the finding rendered by the learned Single Judge in that regard. However, he argued the merits of the case and



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learned counsel appearing for respondents 1 and 2 have also addressed their respective case on merits.

18. The appellant admitted that as against the rejection of their resolution plan by the CoC in its Meeting held on 1.7.2021, they had filed I.A.No.1685 of 2021 before the NCLT and as stated by learned counsel for the first respondent, the said application was dismissed as infructuous on 6.4.2022.

19. During the course of arguments, an order dated 27.7.2022 passed by the NCLT has been produced, wherefrom this Court finds that proceedings under IBC in relation to the parties herein, is pending before the NCLT and the same was last listed on 26.9.2022.

20. Since the matter is in seisin of the NCLT, Mumbai Bench, the Writ Court cannot compel the second respondent to consider the representation of the appellant or issue a direction as prayed for. Admittedly, such a direction would be nothing but entering upon the



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powers and domain of the NCLT. If the appellant has any grievance, it has to approach the NCLT and redress its grievance. In view of the above, we do not find any infirmity in the order passed by the learned Single Judge.

21. Finding no merit in the writ appeal, the same is dismissed. However, the dismissal of the writ appeal will not prevent the appellant from pursuing its remedy before the NCLT in the manner known to law. There will be no order as to costs. Consequently, C.M.P.No.3257 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)
18.10.2022

Index : Yes/No
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To:

The Secretary,
Ministry of Ports, Shipping and Waterways,
Union of India,
Parivahan Bhawan 1,
Parliament Street,
New Delhi-110 001.



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T.RAJA, ACJ.
AND
D.KRISHNAKUMAR,J.

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