IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.R.P.No.3591 of 2022
and
C.M.P.No.19060 of 2022

Greeta Mani ... Petitioner

Vs.

1.JJ Fincap Private Limited
(Formerly Radhasaomi Resources Private Limited)
JJ Manor, 146, Rukmani Lakshmipathy Road,
2nd Floor, Egmore, Chennai – 600 008.

2.Mr.L.V.Shyam Sundar,
Resolution Professional of Greeta Musicals
Instruments Manufacturing and Exporters Pvt. Ltd.,
3rd Floor, No.17, Gandhi Road,
Alwarthirunagar,
Chennai – 600 087. ... Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the

Constitution of India challenging the order passed by the National Company Law Tribunal, Chennai Bench I dated 22.08.2022 passed in M.A.No.17 of 2022 in CP(IB)/282/CHE/2021 on the file of the National Company Law Tribunal, Chennai Bench I and consequently, set aside the order dated 19.04.2022 initiating CIRP in CP(IB)/283/CHE/2021 on the file of the National Company Law Tribunal, Chennai Bench I.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.P.H.Aravind Pandian, Senior Counsel for M/s.Amrith Bhargav for R1.
Mr.Anant Merathia for R2.

O R D E R

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Civil Revision Petition has been filed challenging the order passed by the National Company Law Tribunal dated 22.08.2022 in M.A.No.17 of 2022 in CP(IB)/282/CHE/2021 and to consequently set aside the order dated 19.04.2022 initiating C.I.R.P. (Corporate Insolvency Resolution Process) in CP(IB)/282/CHE/2021 on the file of the National Company Law Tribunal, Chennai Bench I.

2.Heard Mr.R.Parthasarathy, learned counsel for the petitioner, Mr.P.H.Aravind Pandian, learned counsel for the first respondent and Mr.Anant Merathia, learned counsel for the second respondent.

3. The averments in the petition would show that, the petitioner has preferred an appeal before the NCLAT against the order dated 22.08.2022 passed in M.A.No.17 of 2022. The petitioner has also filed an appeal against the order initiating C.I.R.P. (Corporate Insolvency Resolution Process) dated 19.04.2022 before the National Company Law Appellate Tribunal in Comp. Appeal (AT)(CH)(Ins)No.169 of 2022. The Appellate Tribunal had not granted stay of the order of the National Company Law Tribunal initiating the C.I.R.P. (Corporate Insolvency Resolution Process). The petitioner had filed application in M.A.No.17 of 2022 stating that certain additional facts came to her knowledge after the order was passed by the Tribunal on 19.04.2022. The

said application was filed stating that the order dated 19.04.2022 was obtained by the financial creditor by playing fraud on the Court and the alleged outstanding amount was less than the threshold limit of Rs.1,00,00,000/- (Rupees one crore only).

4 (a) Mr.R.Parthasarathy, learned counsel for the petitioner submitted that he is aware of the decisions of this court which held that a petition under Article 227 of Constitution of India cannot be entertained when there is an appellate remedy. But he would submit that in the facts of the instant case since the appellate remedy is not efficacious, the above Civil Revision Petition can be entertained.

(b) The learned counsel submitted that on the application filed by the Financial Creditor (first respondent herein) against the Corporate Debtor namely M/s.Geetha Musical Instrument Manufacturers and Exports Pvt. Ltd., for a prayer to initiate Corporate Insolvency Resolution Process (CIRP), the Company Law Tribunal passed an order on 19.04.2022, admitting the application and directed the Insolvency Resolution Professional, the 2nd respondent herein to conduct Corporate Insolvency Resolution Process (CIRP). The petitioner filed an appeal as a shareholder of the Corporate Debtor before the NCLAT (National Company Law Appellate Tribunal). Thereafter she filed application in M.A.No.17 of 2022 in which the petitioner had made allegations of fraud in the disbursal of loan to third parties of which one company was closely linked to the Financial Creditor and has brought to the notice of the Tribunal about the fact that the outstanding amount payable by the corporate debtor is less than the threshold limit of Rs.1,00,00,000/-.

(c) The learned counsel submitted that the order passed by the Tribunal in M.A.No.17 of 2022 was in violation of principles of natural justice. The National Company Law Tribunal did not give opportunity to the petitioner's counsel to make submissions. That apart, the case was posted on 22.08.2022 for filing of counter and since the respondent did not file counter on that day, the counsels for either side thought that the matter got adjourned. That is the reason why the respondent filed their counter on 23.08.2022, by marking a copy to the petitioner. However, the petitioner later came to know that by a cryptic one line order, the Tribunal had dismissed the petition stating that the

Tribunal did not have powers to review or recall its orders. The learned counsel further submitted that the Tribunal has inherent powers which is reiterated in Rule 11 of the National Company Law Tribunal Rules to recall its order and the Tribunal failed to exercise its jurisdiction. Further, the order dated 22.08.2022 suffers from total non-application of mind in as much as a prayer in another application was extracted in that order.

(d) The learned counsel further submitted that the petitioner had filed an appeal against the order dated 22/08/2022.The appeal remedy is not efficacious. The Appellate Tribunal had returned the appeal twice for the same reasons inspite of compliance and re-presentation by the petitioner. The petitioner, therefore, was constrained to invoke the powers of this Court under Article 227 of the Constitution of India since the time limit fixed for initiating C.I.R.P. (Corporate Insolvency Resolution Process) is 270 days which is to end on 14.01.2023, which can be extended upto 330 days which is to end on 15.03.2023. If the C.I.R.P. (Corporate Insolvency Resolution Process) is completed, then the issue raised by the petitioner would become infructuous. That apart, the learned counsel for the petitioner made submissions with regard to the merits of the case which in our view may not be necessary for the purpose of deciding this Civil Revision Petition.

5.Mr.P.H.Aravind Pandian, learned Senior Counsel for the first respondent / Financial Creditor submitted that the Civil Revision Petition is not maintainable in view of the recent Judgment of the Division Bench of this Court in C.R.P.(PD).No.525 of 2022 and C.M.P.No.2785 of 2022 dated 24.02.2022, when an appellate remedy is available to the petitioner. The learned Senior Counsel further submitted that in this case, the petitioner had indulged in forum shopping. In the appeal filed by the National Company Law Tribunal, the petitioner was unable to obtain stay and had filed the application in M.A.No.17 of 2022 as an after thought. The allegations of fraud and that the claim is less than the threshold limit, even assuming to be true was available to the petitioner at the time, when the order dated 19.04.2022 of the Tribunal initiating C.I.R.P. (Corporate Insolvency Resolution Process) was passed by the Tribunal. In any case, the petitioner has already preferred an appeal against the order passed in M.A.No.17 of 2022. The petitioner has made certain averments which are in the nature of complaints against the

Registry of National Company Law Appellate Tribunal. Those averments cannot be gone into in a Civil Revision petition. In any event, the National Company Law Appellate Tribunal is not a party in the above Civil Revision Petition.

6.The learned counsel for the second respondent reiterated the submissions made by the learned counsel for the first respondent.

7.Heard the learned counsel for the petitioner, the learned Senior Counsel for the first respondent and the learned counsel for the second respondent.

8.The petitioner is the promotor / share holder of the company Corporate Debtor. She had alleged that her husband and son had fraudulently entered into a loan agreement with the financial creditor. In any case, the loan disbursed to the company was Rs.1,01,54,963/- out of which the company had paid Rs.59,62,231/-. Therefore, the claim amount was only Rs.81,91,399/-. According to the petitioner, the balance loan amount was credited to some other account which has nothing to do with the Corporate Debtor and those companies in which the loan was allegedly credited had close links with the financial creditor. Therefore, fraud was played in the disbursal of loan and in obtaining the order from National Company Law Tribunal.

9.We find that the appeal has been filed against the order dated 19.04.2022 which initiated C.I.R.P. (Corporate Insolvency Resolution Process). The petitioner had admittedly not obtained any stay for the said order. Subsequent application according to the petitioner was filed on the basis of certain allegations. This is disputed by the respondents. According to the respondents, all these facts could have been raised even before the order dated 19.04.2022 was passed and the claim made by the petitioner that she came to know all these additional facts subsequently, is only a ruse to file another application since the petitioner failed to get stay before the National Company Law Appellate Tribunal against the earlier order. We find that the allegations of fraud is based on the fact that a major portion of the loan was disbursed to third parties who had nothing to do with the Corporate Debtor. We are of the view that the alleged fraud in the loan transaction is a matter which has to be adjudicated on merits in the appeal filed by the petitioner.

10. However, the issue that remains is whether the impugned order passed is without Jurisdication, and can be set aside by invoking the powers under Article 227 of the Constitution of India. A Division Bench of this Court in C.R.P.(PD).No.525 of 2022 and C.M.P.No.2785 of 2022 dated 24.02.2022 had, after considering all the Judgments of the Hon'ble Apex Court, held that when an appellate remedy is available, this Court shall not entertain a petition under Article 227 of the Constitution of India. The relevant portions are extracted hereunder.

> *"5.On a perusal of the recent judgments of the Apex Court, it is clear that when an appeal remedy is provided under the Act, the aggrieved party should exhaust the said remedy by filing an appeal before the Appellate Forum and the Writ Petition/Civil Revision Petition filed by them under Articles 226/227 of the Constitution is not maintainable. When the petitioner can raise all the grounds available to them under law before the Appellate Forum, the filing of the Civil Revision Petition under Article 227 cannot be entertained".*

11.The petitioner has stated that the Tribunal's order can be set aside if the petitioner is able to show that this case would fall within the exceptions for exercising power under Article 227 of the Constitution of India notwithstanding the availability of appellate remedy. The learned counsel submitted that since the Tribunal had not exercised its inherent powers to recall, vested with it inspite of fraud being brought to its notice. The Tribunal had passed a non-speaking cryptic one line order. The Tribunal had in the previous hearing granted time to the financial creditor to file the counter. However, without waiting for the counter and without giving opportunity to make submissions had dismissed the petition. The Tribunal also did not make it very clear as to what order was passed on that day and that is why the first respondent filed a counter on the next day. The order further suffers from total non-application of mind. We have recorded the above submissions of learned counsel for the petitioner only to show that all the grounds raised by him can be raised before the appellate forum. This is not a case where the petitioner alleges lack of jurisdiction but only wrongful exercise of jurisdiction, in which case, this Court would not exercise its power under Article 227 of the Constitution of India when there is an appellate remedy.

12.Further the Petitioner's case is that the appellate remedy is not efficacious, since the appeal filed is yet to be numbered. According to the petitioner, the appeal was returned on 20.09.2022 with certain defects. The petitioner had re-presented the appeal on 15.10.2022 nearly 16 days after the return. Again the appeal was returned on 02.11.2022 since the page numbers in the hard copy and soft copy did not match. In any event, this Court, in this petition cannot hold that the appellate remedy is not efficacious merely because certain returns were made by the Registry of the appellate forum. It is for the petitioner to be diligent and pursue the appeal as per the rules. The petitioner admittedly was unable to obtain stay before the appellant forum as against the order dated 19.04.2022 and now cannot seek for setting aside the order dated 22.08.2022 in M.A.No.17 of 2022 and for consequential relief to set aside the order dated 19.04.2022 by invoking the Court's power under Article 227 of the Constitution of India.

13.Therefore, for the above reasons, we see no merits in the Civil

Revision Petition and hence, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

(V.M.V.,J) **(S.M.,J.)**

01.12.2022

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Index : Yes / No

To

The Section Officer
V.R Section
Madras High Court.

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and
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