IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Judgment reserved on : 31.10.2022
Judgment pronounced on : 23.12.2022

(1) **CWP-26164-2018 (O&M)**

KANWALJIT SINGH TOOR & ANOTHER

.........Petitioners

VERSUS

PUNJAB STATE CONSUMER DISPUTES REDRESSAL COMMISSION & OTHERS

....Respondents

(2) CWP-14840-2019 (O&M)

ASHISH MOHAN GUPTA

.........Petitioner

VERSUS

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I AND OTHERS

....Respondents

(3) CWP-15117-2019 (O&M)

ASHISH MOHAN GUPTA

.........Petitioner

VERSUS

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I AND OTHERS

....Respondents

(4) **CWP-15150-2019 (O&M)**

ASHISH MOHAN GUPTA

.........Petitioner

VERSUS

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I AND OTHERS

....Respondents

(5) **CWP-15241-2019 (O&M)**

ASHISH MOHAN GUPTA

.........Petitioner

VERSUS

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I AND OTHERS

....Respondents

(6) **CWP-26663-2019 (O&M)**

NIRMAL SINGH BHANGOO

.........Petitioner

VERSUS

PUNJAB STATE CONSUMER DISPUTES REDRESSAL COMMISSION AND OTHERS

....Respondents

(7) **CWP-31770-2019**

NIRMAL SINGH BHANGOO

.........Petitioner

VERSUS

PUNJAB STATE CONSUMER DISPUTES REDRESSAL COMMISSION AND OTHERS

....Respondents

(8) **CWP-5120-2020 (O &M)**

ASHISH MOHAN GUPTA

.........Petitioner

VERSUS

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I AND OTHERS

....Respondents

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CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Anand Chibber, Sr. Advocate, with
Mr. Vikas Kuthiala, Advocate,
for the petitioner in CWP-14840-2019,
CWP-15117-2019, CWP-15150-2019,
CWP-15241-2019 and CWP-5120-2020.

Mr. Raghav Gulati, Advocate,
for the petitioners in CWP-26164-2018.

Mr. Baljinder Singh, Advocate,
for the petitioner in CWP-26663-2019
and CWP-31770-2019.

Ms. Vasundhara Dalal Anand, Advocate, for
Ms. Priyanka Dalal, Advocate, for respondent No.1.

Mr. Arun Gosain, Senior Govt. Counsel
for respondents No.2 and 4-Union of India.

Mr. Randeep Singh, Advocate, for
Mr. Anuj Kohli, Advocate,
for respondent No.3 in CWP-26164-2018.

Mr. Mukund Gupta, Advocate
for respondent No.5
in CWP-14840-2019, CWP-15117-2019,
CWP-15150-2019 and CWP-15241-2019.

Ms. Niharika Sharma, AAG, Punjab.

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VINOD S. BHARDWAJ. J

1. These eight writ petitions are being disposed by a common judgment since the parties agree that common question of law arises for consideration. The issue pertains to the scope of Section 14 of the Insolvency and Bankruptcy Code, 2016 and as to whether the moratorium under Insolvency and Bankruptcy Code would also provide an immunity or protection to the Directors of the company. Five writ petitions have been filed by the Ashish Mohan Gupta, two writ petitions have been filed by Nirmal Singh Bhangoo while one writ petition has been filed by Kanwaljit Singh Toor. The facts of the respective batch of the petitions are as under:

CWP-26164-2018

KANWALJIT SINGH TOOR & ANOTHER

VERSUS

PUNJAB STATE CONSUMER DISPUTES REDRESSAL COMMISSION & OTHERS

2. The petitioner(s) seek issuance of a writ in the nature of prohibition to restrain the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as "PSCDRC") from initiating proceedings under Section 27 of the Consumer Protection Act, 1986 in relation to the assets/liabilities of Pearl Infrastructure Projects Limited being subsidiary of respondent No.2 i.e. M/s Pearls India Limited-formerly known as Pearls Agrotech Corporation Limited (PACL). Reliance has been placed on the order dated **02.02.2016** passed *in* ***Civil Appeal No. 13301 of 2015*** by the Hon'ble Supreme Court in the matter of "***Subrata Bhattacharya versus Securities and Exchange Board of India***" whereby the Committee i.e. "Lodha Committee" had been

constituted to protect the interest of the investors. The petitioners herein are the erstwhile Directors of Pearls Infrastructure Projects Limited which is a subsidiary of PACL and was offering its services as an agent to advertise the projects & to sell the land of PACL. The Pearls Infrastructure Projects Limited (hereinafter referred to as "PIPL"), of which the petitioners were the Directors entered into a Project Management Agreement with respondent No.2-PACL on 11.07.2006 whereby the Company offered its service as agent to advertise the land of PACL. Various investors had invested their funds in respondent No.2-PACL through PIPL in the agency. The said investors filed complaints under Section 17 of Consumer Protection Act, 1986 with the PSCDRC alleging deficiency of service, non-delivery of possession and also claiming the refund of the amount invested with the PACL through PIPL. In certain complaints, the petitioners were also impleaded as opposite parties being Directors of PIPL whereas in some cases complaints were filed only against the company. The holding company i.e. respondent No.2-PACL entered into various financial troubles. Proceedings were initiated against the holding company by the Securities and Exchange Board of India (hereinafter referred to as "the SEBI"). The Recovery Officer of the SEBI drew a recovery certificate No. 832 dated 11.12.2015 for recovery of a sum of Rs. 49,100 crores alongwith promised returns against the respondent No.2-PACL; its promoters and Directors. Raising a challenge to the aforesaid recovery certificate, Directors of respondent No.2-company approached the Hon'ble Supreme Court of India in Civil Appeal Nos.13301 of 2015 titled as "***Subrata Bhattacharya versus Securities and Exchange Board of***

***India*"**, where, vide an order dated 02.02.2016, the Hon'ble Supreme Court directed the SEBI for constitution of a Committee headed by Hon'ble Mr. Justice R.M. Lodha, former Chief Justice of India for disposing of the assets/land purchased by the respondent No.2-Company so that the sale proceeds thereof can be utilized to repay to the investors. It was also held that the Committee shall collect relevant record including the title deed from the Central Bureau of Investigation and further directed that the decision with regard to sale of property of company by the Committee shall not be interfered with by any Court.

3. Another order was passed on 27.07.2016 in the above Civil Appeal by the Hon'ble Supreme Court restraining the Directors/Promoters/Agents etc. of the company/Group industrial companies from creating any third party right or interest in properties of PACL within or outside India. The recovery cell of the Securities and Exchange Board of India issued a letter bearing No.AP No.2644 of 2016 giving details of list of companies related to PACL in which the respondent No.3-PIPL, of which the petitioners are the Directors is listed at Sr. No. 640.

4. The complaints that were instituted before the PSCDRC were allowed by the Commission and the respondent-companies i.e. PIPL and PACL were directed to refund the amount. The petitioners have appended some of the awards passed by the Consumer Commission as Annexure P-5 including the award dated 04.01.2017 passed in Consumer Complaint No. 205 of 2014; award dated 15.06.2017 in Consumer Complaint Nos. 278 of 2015 & 288 of 2015; award dated 21.07.2017 in Consumer Complaint No. 142 of 2015 as well as award

dated 06.12.2017 in Complaint No.561 of 2017. The PIPL, of which the petitioners are the Directors is also a respondent-opposite party in the said awards.

5. In the cases that were decided later, the PSCDRC also directed that the recovery proceedings as per the award should be effected from PIPL as well in accordance with the recommendation of the R.M. Lodha Committee constituted by the Hon'ble Supreme Court of India. The petitioner(s) claim to have resigned from being the Director of the Company vide resignation letter dated 07.10.2017 which had also been forwarded to the Registrar of Companies.

6. Eventually, execution proceedings were instituted wherein petitioners were ordered to be proceeded against ex-parte and thereafter non-bailable warrants of arrest of the petitioners were issued firstly in a case titled as **"*Geeta Dutt versus Pearls Infrastructure Projects Limited*"** bearing Consumer Complaint No.205 of 2014 and Execution application No. 64 of 2017 on the ground that proceedings had also been instituted against PIPL and its Directors and the award passed earlier as well as the recovery certificate issued by the Recovery Officer of SEBI giving details of the group companies. An application for recalling of the order dated 26.03.2018 issuing non-bailable warrants was thereafter moved by the petitioner(s) before the PSCDRC. The same was, however, dismissed vide order dated 30.05.2018 (Annexure P-9) on the ground that the PSCDRC does not have any power to review its own orders. The above order was challenged in appeal before National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC"). The said appeal was withdrawn on 17.09.2018 to enable the petitioners

to avail appropriate legal remedy as per law and an interim stay of arrest was granted till 15.10.2018. The present petition was then filed challenging to the proceedings instituted before the PSCDRC under Section 27 of the Consumer Protection Act, 1986.

7. Written statement on behalf of the PSCDRC was filed wherein it was pointed out that the writ petition was not maintainable as an efficacious alternative remedy of an appeal before the NCDRC under Section 21 of the Consumer Protection Act, 1986 was available to the petitioners and that the writ petition would not be an appropriate remedy to raise a challenge to the orders passed under the Consumer Protection Act, 1986.

CWP-14840-2019

ASHISH MOHAN GUPTA

VERSUS

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-I AND OTHERS

8. Even though five writ petitions have been filed by Ashish Mohan Gupta, however, the facts being identical, reference to the facts is from the above writ petition.

9. The petition raises a challenge to the order dated 07.05.2018 (Annexure P-11) passed by respondent No.1-District Consumer Disputes Redressal Forum-1, Chandigarh in execution application No.73 of 2017 in Consumer Complaint No.286 of 2016 filed by respondent No.5-Consumer-Bhupinder Kaur under Section 27 of the Consumer Protection Act, 1986. A further prayer was made for issuance of Mandamus to clarify the scope and ambit of Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 and to further declare that

Section 10 (4) and Section 14 of the Code are mandatory.

10. The respondent No.5-Bhupinder Kaur-consumer had filed a complaint No.286 of 2016 tilted as "*Bhupinder Kaur versus M/s Hind Motors (I) Ltd. & Others*" due to failure of the respondent No.6-company to release the maturity amount to the Consumer on its date of maturity. The petitioner is the Promoter and Director of respondent No.6-Company i.e. Hind Motors (India) Limited. The aforesaid complaint was allowed vide award dated 21.03.2017 which was challenged before the State Consumer Commission in appeal No.1 of 2017. The said appeal was also dismissed by the State Consumer Commission, U.T. Chandigarh vide judgment dated 13.06.2017 (Annexure P-2). In the meanwhile, the National Company Law Tribunal, Chandigarh Bench initiated insolvency proceedings qua respondents No.6 & 7 companies i.e. Hind Motors (India) Limited and Hind Motors Limited vide orders dated 14.02.2017 and 09.03.2017. A moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 was planted by the NCLT qua the respondent Companies. It is submitted that due to the severe financial crunch and extreme losses in the business, the company was not able to comply with the orders passed by the District Consumer Forum. The NCLT had initially excluded the public depositors from the moratorium due to which the respondent No.6 company preferred an appeal before the NCLAT. The said appeal was allowed vide order dated 10.04.2017 (Annexure P-4). A meeting of all public/fixed depositors of the company was called by the IRP on 24.04.2017. It is submitted that a Committee of Creditors was duly constituted and meeting of all the depositors was held and one of the

depositors was also appointed to represent on behalf of the fixed deposit holders in the Committee of creditors. Hence, the public depositors have also joined the insolvency proceedings of respondent No.6-company and all such depositors thus become financial creditors of the said company. The petitioner had also filed Revision Petition against the order dated 17.01.2017 of the State Consumer Commission before the National Consumer Commission. In view of the above developments, the revision petition filed before the National Consumer Commission was withdrawn with liberty to take recourse to the appropriate remedy available for redressal of their grievances against adverse orders in execution proceeding.

11. That as the resolution plan of respondent No.6.-Company had not been approved by the Committee of Creditors, hence, order of liquidation was passed by the National Company Law Tribunal on 28.08.2017 & 12.09.2017 and invoked the moratorium under Section 33 of the Insolvency and Bankruptcy Code, 2016. Board of Directors of respondents No.6 & 7 was suspended and the control of the company lay solely with the appointed liquidator.

12. The order of NCLT dated 09.03.2017 (Annexure P-3) under Section 14 of Insolvency and Bankruptcy Code, 2016 was relied upon to issue warrant of arrest against the petitioner who duly appeared in the execution proceedings that were filed before the District Consumer Forum and filed his objections. The same were dismissed vide order dated 07.05.2018 and the petitioner was directed to be arrested. It is claimed that the order against the petitioner in his personal capacity was thus wrong as the petitioner had no control over the affairs of respondent

No.6-Company which was under the control of the liquidator. The said order was therefore challenged before the State Consumer Commission, however, the same was also dismissed vide order dated 04.10.2018. The revision petition preferred before the National Consumer Commission was dismissed as not maintainable vide order dated 23.05.2019. The present writ petition was thereafter filed challenging the said execution proceedings and the warrants of arrest dated 07.05.2018.

13. Even though no formal reply on behalf of respondent No.5-Consumer has been filed, however, an application for vacation of stay was filed by respondent No.5 and counsel appearing on behalf of the said respondent submitted that the averments contained in the application may be treated as his response to the writ petition as well.

14. A perusal of the same shows that respondent No.5-Consumer claims to have deposited a sum of Rs. 3.50 lacs in fixed deposit with the respondent No.6-Company and was entitled to receive an amount of Rs. 5,64,370/- alongwith interest on 17.06.2015 on its attaining maturity. Owing to the non-payment by the respondent-company, the complaint was filed before the District Consumer Disputes Redressal Forum-1, U.T. Chandigarh for claiming the refund of the maturity amount. Rest of the facts are, however, not disputed. It is pointed out that despite the complaint having been allowed and the statutory remedies available to the petitioner having been availed without success, the award shall remains unexecuted. Hence, non-bailable warrants were issued against the petitioner and the process for declaring the petitioner as a Proclaimed Person was also initiated under Section 82 of the Cr.P.C. The objections filed by the petitioner have been dismissed and that the said orders have

also attained finality. There is no reason why the same ought not to be complied with. It is also pointed out in the aforesaid response that the petitioner had duly stated before the NCLT as well as before the other statutory forums and authorities that he is ready and willing to settle the claims and pay the outstanding liabilities and thus availed of concessional indulgence of the Court and has not honoured his commitment so made. The petition thus ought to be dismissed.

CWP-31770-2019

NIRMAL SINGH BHANGOO

VERSUS

PUNJAB STATE CONSUMER DISPUTES REDRESSAL COMMISSION & OTHERS

15. Two petitions have been filed by the petitioner who is a former Director of M/s Pearls Infrastructure Projects Limited i.e. "PIPL" which is a subsidiary of respondent No.3-PACL. The petitioner has prayed for issuance of writ in the nature of Mandamus directing the respondent No.1 to Transfer Execution Application No.221 of 2017 in Consumer Complaint No. 382 of 2016 pending under Section 27 of the Consumer Protection Act, 1986 to the "Lodha Committee" constituted vide order dated **02.02.2016** in the matter of ***"Subrata Bhattacharya versus SEBI"*** bearing **Civil Appeal No. 13301 of 2015**. A further prayer for issuance of writ in the nature of prohibition to restrain respondent No.1-PSCDRC from proceedings against the petitioner under Section 27 of the Consumer Protection Act, 1986 was also made.

16. The facts of the case shows that the respondents No.4 & 5 consumer namely Devendra Kumar Goel and Sheela Goel had instituted a complaint under Section 17 of the Consumer Protection Act, 1986

against the respondent-companies. The said complaint was allowed by respondent No.1-PSCDRC vide order dated 26.09.2017 and the opposite party-respondents Companies were directed to refund the amount alongwith interest and compensation as well as cost. An execution application No.221 of 2017 was filed by the respondents No.4 & 5-Consumer decree holder on 10.12.2017 against the companies. Details of various Directors of the Company were also mentioned in the execution application is as under:

Full Name	**Present residential address**	**Designation**	**Date of appointment**	**Whether DSC registered**	**Expiry date of DSC**
Kanwaljit Singh Toor	Kothi No. 1026, Phase-10, Mohali 160062	Whole Time Director	05/04/2005	Expired	27.03.2017
Mohal Lal Sehjpal	H.No. 178, Sector-10, Panchkula, Haryana	Whole Time Director	27.10.2006	Yes	19.09.2018
Gurpreet Singh	H.No. 1537, Phase 3B2, SAS Nagar, Mohali	Director	06.07.2017	Yes	20.09.2018
Balwinder Singh	H.No. 1240, Sector-21-B, Chandigarh	Director	06.07.2017	Yes	22.09.2018
Sarvesh Kumar	251 United Apartments, Plot No.34, Sector-4, Dwarka New Delhi 110078	Director	13.05.2018	Expired	19.11.2017
Munit Gupta	H.No. 206, Sector 9, Panchkula 134109	Director	06.07.2017	No	22.09.2018

Rahul Sharma	F-956 Naraina Vihar, Delhi 110028	Director	06.07.2017	No	22.09.2018
Umesh Bishnoi	H..No. 121 Village Haripura Tehsil Abohar, District Fazilka 152128	Director	06.07.2017	No	22.09.2018
Rahul Mehra	H.No. 2357, Sector 49-C, Chandigarh 160047.	Director	06.07.2017	No	22.09.2018

17. The petitioner claims to have not been a Director of the respondent-companies. He was, however, arrested by the Central Bureau of Investigation on 08.01.2016 and his custody was thereafter transferred to Punjab Police in case FIR No. 42 of 2016 registered under Sections 406 and 420 IPC at Police Station Bathinda. The details of the petitioner being in custody was not set out in the execution application due to which the petitioner was ordered to be proceeded against ex-parte. Bailable warrants was eventually issued on 01.01.2019 but the same remained unexecuted. The petitioner appeared on production warrants in the proceedings before respondent No.1 from Jail. Objection was accordingly filed against continuation of the proceedings before the Executing Court on the ground that the petitioner has never been associated with the company as a Managing Director or as its Director. He remained Director of the holding company i.e. PACL for a short period from 1996-1998 and has not remained connected with the functioning of PACL since then. The Recovery Officer of SEBI had

drawn the recovery certificate No. 832 dated 11.12.2015 for recovery of Rs. 49,100/- crores. The Hon'ble Supreme Court appointed a Committee headed by Hon'ble Mr. Justice R.M. Lodha to carry out sale of the property of the Company to repay the investment. The recovery cell of SEBI issued list of companies of PACL Ltd. Further, vide order dated 25.07.2016, the Hon'ble Supreme Court restrained the Directors/Promoters/agents/employees etc. of PACL or associated companies from creating any right or interest in the properties. Since all assets vest in Lodha Committee, proceedings under Section 27 of the Consumer Protection Act, 1986 against the petitioner would not serve any useful purpose since he remains unable to generate any funds from the assets of the companies in dispute of the proceedings under Section 27 of the Consumer Protection Act, 1986 are thus over-riding the orders dated 02.02.2016 & 25.07.2016 passed by the Hon'ble Supreme Court.

18. Written statement on behalf of respondents No.4 & 5 has been filed wherein they allege that the petitioner duped large number of investors and have embezzled their hard earned money. The possession of the plots was to be delivered in 2013 but was not handed over even till 2017. Hence, the consumer complaint had been filed. The complaints were duly contested till the highest level, but with no success. Nearly 640 companies were created to defraud the investors. The Project Management Agreement is merely an after-thought to siphon off funds. The said agreement was also never submitted to the Court when complaint/appeals were being considered. The petitioner is a party to the proceedings & is bound to comply with the award. Failure to comply would entail proceedings under Section 27 of the Consumer Protection

Act, 1986. The petitioners as Directors were actively controlling & running the affairs of the company and are liable to comply with the award against them. They cannot thus shield themselves under the cloak of a corporate veil. The “Lodha Committee” is only to over-see the payments to the victims and not to condone for the criminal acts of the Directors. The proceedings thus deserve to be continued & the present petition is liable to be dismissed.

19. He further submits that the Consumer Protection Act is a self contained code and challenge to of the orders passed there under has to be raised in accordance with the procedure prescribed therein instead of by means of writ before the High Court.

20. Learned Senior Counsel appearing for the petitioners has argued that Insolvency and Bankruptcy Code, 2016 was notified to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner; for maximization of value of such assets and also to balance the interest of all stakeholders including the alteration in the order of priority payment of the government dues. It is contended that the initiation of proceedings under the Insolvency & Bankruptcy Code, 2016 may be done either under Section 7 which empowers the ‘Financial Creditors’ to initiate the Corporate Insolvency Resolution Process or under Section 8 which entitles the ‘Operational Creditors’ to invoke the insolvency resolution or by a ‘Corporate Applicant’ under Section 10 of the Insolvency and Bankruptcy Code, 2016. A moratorium in terms of Section 14 can be declared by the adjudicating authority under the Insolvency and Bankruptcy Code, 2016.

Upon declaration of such a moratorium, the institution of suits or continuation of pending suits or proceedings against the 'Corporate debtor' including execution of any judgment, decree or order passed by any Court of law, tribunal, arbitration panel or other authority shall be prohibited. Additionally, any action to foreclose, recover or enforce any security interest related to the corporate debtor alongwith recovery of any property by an owner or lessor where the property is in possession of the debtor, is also prohibited. He contends that the moratorium would thus also apply to the execution proceedings instituted before "other authority" and that the Consumer Forums would fall under the above definition. Reference is also made to Section 238 of the Insolvency and Bankruptcy Code, 2016 to contend that the provisions of the Code have an overriding effect on all other laws and hence, the provisions of the Consumer Protection Act is subject to the Insolvency and Bankruptcy Code, 2016.

21. It is further argued by the learned counsel that the original complaint was never instituted against the petitioners and that the same was instituted only against the company. The amounts in question had also been paid and/or deposited with the company and that the petitioner was not the recipient of the said amount in his individual capacity. It is also contended that the applicants-petitioner had never undertaken to repay the aforesaid amount in their personal capacity and in the absence of any individual liability to handover the houses/plots or refund the amount on attaining maturity, the proceedings against the petitioners in their individual capacity would not be sustainable. It is further argued that the respondents having been associated in the Committee of

Creditors and having been made part of the decision making process for the recovery of the dues payable cannot separately hold the petitioners liable for the same. The petitioners cannot be held liable or prosecuted for failure of the corporate debtor to pay the dues especially when the petitioners are no more incharge of the affairs of the said company and liabilities have to be now discharged by the Committee approved by the Hon'ble Supreme Court.

22. Reliance was placed on the judgment of Delhi High Court in the matter of "***Dr. V.P. Mainra versus Dawsons Leasing Ltd***". bearing CA Nos. 72, 73, 75, 76, 1251 and 1252 of 2003 in C.P. No. 323 of 1999 decided on 24.09.2004 to contend that the provisions of erstwhile Section 446 of the Companies Act, 1956, which is at par with Section 14 of the Insolvency and Bankruptcy Code, 2016 clearly held that the proceedings under Consumer Protection Act could not be continued. It was the obligation of the company to comply with the orders passed by the Consumer Forum and that the Directors are not personally liable to ensure compliance of the same. Being ex-Directors and having not committed any act which may be personally attributed to them, proceedings under the Consumer Protection Act cannot be enforced. The relevant part of the said judgment reads thus :-

> *"15. The result of the aforesaid discussion would be that the proceedings under Section 27 of the CP Act in the instant case shall be covered by Section 446 of the Act and, therefore, such proceedings cannot continue except with leave of this court. It would be appropriate to transfer execution proceedings filed under Section 27 of the CP Act, to this court. These execution proceedings, particulars whereof have already been noted above, shall stand*

transferred to this Court. The registry may send request to the District Forum-II, New Delhi as well Ghaziabad for transmitting the records of those proceedings to this court."

23. Further reference was made to the Division Bench judgment of the Delhi High Court in the matter of ***Pr. Commissioner of Income Tax-6, Newdelhi versus Monnet Ispat and Energy Ltd.***" wherein it was held that the provisions of the Insolvency and Bankruptcy Code, 2016 would apply notwithstanding anything inconsistent therein contained in any other law for the time being inforce and that the moratorium would apply against all pending proceedings before the Courts, Tribunal, Arbitration or other authorities. The relevant part thereof reads thus:

> *"2. It appears to the Court that Section 238 of the Code is categorical that the Code will apply, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 14(1)(a) of the Code states, inter alia, that on the 'insolvency commencement date' the Adjudicating Authority (AA) shall by order declare moratorium for prohibiting "the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority." That the Code will prevail over all other statutes inconsistent therewith has been explained in the recent decision dated* ***31st August, 2017 of the Supreme Court in Civil Appeal No. 8337-8338/2017 (M/s. Innoventive Industries Ltd. v. ICICI Bank)."***

24. The aforesaid judgment was subject matter of challenge before the Hon'ble Supreme Court of India and was decided vide judgment dated **10.08.2018** reported as **2018 (18) SCC 786** reiterating the overriding effect of Section 238 of the Insolvency and Bankruptcy

Code, 2016.

25. A reference was also made to the judgment of the Hon'ble Supreme Court of India in the matter of "***Jaipur Metals and Electricals Employees Organization though General Secretary Mr. Tej Ram Meena versus Jaipur Metals and Electricals Limited through its Managing Director & Others***" reported as ***2019 (4) SCC 227*** wherein the Court directed transfer of all proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 to the National Company Law Tribunal (NCLT) and held that Section 238 of the Insolvency and Bankruptcy Code, 2016 applies to independent proceedings instituted by a secured financial creditor. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the matter of "***M/s Innoventive Industries Limtited versus ICICI Bank & Another***" reported as ***2018 (1) SCC 407***. The relevant paragraphs thereof reads thus:-

> *"54. On reading its provisions, the moment initiation of the corporate insolvency resolution process takes place, a moratorium is announced by the adjudicating authority vide Sections 13 and 14 of the Code, by which institution of suits and pending proceedings etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.*
>
> *55. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, the State Government may take ever the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place*

under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, Inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-a-vis action taken under the later Central enactmeit. Also, Section 238 of the Code reads as under:

> ***Sec. 238. Provision of this Code to override other laws.-***
>
> *The provisions of this Code shall have affect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or aiy instrument having effect by virtue of any such*

> *law."*
>
> *It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code."*

26. Reference was also made to the judgment of the Hon'ble Supreme Court in the matter of "***P.Mohanraj & Others versus M/s Shah Brothers Ispat Private Ltd."*** reported as ***2021 (6) SCC*** **258** wherein it was held that the proceedings under Section 138/141 of the Negotiable Instruments Act instituted against the corporate debtor were held to be covered by moratorium under Section 14 (1) of the Insolvency and Bankruptcy Code, 2016. It is thus contended that even though natural persons have been held amenable to criminal prosecution, however, the said judgment would not apply against the petitioners inasmuch as the proceedings under Section 27 of the Consumer Protection Act, 1986 are not in the nature of Criminal Proceedings and instead are in the nature of civil proceedings for execution of an award already passed by the Consumer Forum.

27. The counsel representing the petitioner(s) in the matter of "Kanwaljit Singh Toor" has additionally contended that the PACL had filed Civil Appeal No. 13301 of 2018 and that transfer/alienation or creation of any third party charge has already been stayed by the Hon'ble Supreme Court vide order dated 25.07.2016 and that in case the award is sought to be executed by the consumer forum, the same would be in violation of the order passed by the Hon'ble Supreme Court on 25.07.2016.

28. Responding to the aforesaid submissions and arguments, learned counsel appearing on behalf of the consumer-private respondents has argued that in one of the matters i.e. CWP-15117-2019, the complaint in question was instituted jointly against the company as well as the petitioner-Ashish Mohan Gupta in his individual capacity and the award in question had also been passed prior to the order under Section 14 of the Insolvency and Bankruptcy Code and much prior to the petitioner resigning from the Board of Directors of the respondent-companies. It was also contended that the petitioner had also preferred an appeal before the State Consumer Disputes Redressal Commission which was dismissed and that the petitioners are not parties in the proceedings pending before the NCLT under the Insolvency and Bankruptcy Code, 2016. The said proceedings were instituted against the respondent-company and the petitioner never preferred any appeal against the said order or approached the Hon'ble Supreme Court for seeking protection. It is thus urged that since the order in question has already become final and no moratorium was granted for proceeding against petitioners, continuation of proceeding is valid. Reliance is also placed on the judgment of Hon'ble Supreme Court in the matter of "***Nivedita Sharma versus Cellular Operators Association of India***" reported as ***2011 (14) SCC 337*** to contend that writ petition against an order passed by the State Commission would not be maintainable as the aggrieved party has an alternative remedy of appeal under the Consumer Protection Act. It was held by the Hon'ble Supreme Court that when a statutory forum has been provided by law for redressal of a grievance, writ petition should not ordinarily be maintained ignoring the statutory

procedure. Reference was also made to the judgment of this Court passed in the matter of "***Directorate of Social Justice and Empowerment, Haryana versus State Consumer Disputes Redressal Commission through its Presiding Officer***" bearing ***CWP No.3476 of 2012 decided on 07.03.2012.*** Another reference was also made to the judgment of the Hon'ble Supreme Court in the matter of "***Cicily Kallarackal versus Vehicle Factory***" reported as ***2012 (8) SCC 524*** wherein it was again reiterated by the Hon'ble Supreme Court that where the legislature has provided for remedy of statutory appeal, High Court cannot bypass the statutory remedy. Reliance was also placed on the judgment of this Court in case titled as ***"Parnav Ansal versus State Consumer Disputes Redressal Commission Punjab and Others"*** bearing ***CWP-9079 of 2020 decided on 13.08.2020*** wherein it was held that an appeal under Section 27(A) (1)(b) of the Consumer Protection Act lies against an order passed by the State Commission under Section 27 of the Act to the National Commission and that it would not be proper to exercise jurisdiction under Article 226 of the Constitution and entertain a writ petition. Liberty was however granted to the petitioner to avail the statutory remedy available to him. The said view was also followed in the judgment of "***WWICS Estates Private Limited and others versus Dr. Ghanshyam Bhupal and others***" reported as ***2021 (1) R.C.R (Civil) 676.***

29. It was also additionally argued that an FIR had also been registered against the petitioner-Ashish Mohan Gupta wherein he applied for concession of bail in CRM-M-31304-2017 decided on 31.10.2017 titled as "***Ashish Mohan Gupta versus State of U.T.,***

Chandigarh". The petitioner and his companies had entered into a settlement agreement with 161 claimants and also placed on record photocopies of the modalities settled between each other indicating schedule of re-payment. A statement was also made by the management as well as the petitioner that they are ready to accommodate any left out claimants on the same terms and conditions and to remain bound by the undertaking. In view of the aforesaid settlement projected by the petitioner, the concession of bail was extended to him. However, the petitioner did not satisfy his undertaking and expressed that he is unable to pay the amount whereupon the petitioner was directed to surrender vide order dated 18.08.2021. The challenge to the above order was raised before the Hon'ble Supreme Court of India in SLP No.6369-2021 and the same was dismissed vide order dated 31.08.2021. The petitioner had thereafter approached this Court again by filing CRM-M-42754-2021 which was decided vide order dated 06.12.2021 wherein the petitioner had stated that a sum of Rs. 2.07 crores approximately had been undertaken to be paid and that an amount of Rs. 1.52 crores approximately already stands paid alongwith interest and that the remaining amount of Rs. 55.19 lakhs would be paid in monthly installments by October, 2023. Considering the aforesaid statement, the petitioner was, thereafter, ordered to be released on bail vide order dated 06.12.2021. It is thus submitted that the petitioner has availed of the concession of regular bail by undertaking that he shall clear the dues in a time bound manner and that the present petition has been instituted to avoid payment of the liabilities that have already been undertaken by the petitioner to be discharged, at the time of seeking bail.

30. He further contends that the I.B.C. 2016 and the precedent judgment of the Hon'ble Supreme Court have denied protection to any person other than a 'Corporate Debtor' under Section 14 of the Insolvency and Bankruptcy Code, 2016. Since the petitioner does not fall in the above definition, no such protection can be extended to him. He further submits that the proceedings in question are in the nature of criminal proceedings under Section 27 of the Consumer Protection Act, 1986 and being punitive in nature, there would be no protection to the petitioners even otherwise.

31. Learned counsel for the petitioner has, however, placed reliance on the judgment of the Hon'ble Supreme Court in the matter of "***Ibrat Faizan versus Omaxe Buildhome Pvt. Ltd".*** reported as ***2022 SCC OnLine SC 620*** wherein the Hon'ble Supreme Court has held that writ petition would be maintainable against an order passed by the National Commission in an appeal before the High Court and that such a remedy would be in furtherance of Right of Access to justice to an aggrieved party to approach High Court at lower cost rather than by way of Special Leave to Appeal under Article 136 of the Constitution. He submits that the Hon'ble Supreme Court has upheld the maintainability of writ jurisdiction before the High Court.

32. I have heard learned counsel appearing for the respective parties and have gone through the documents placed on record as also the precedents relied upon by the respective parties.

33. Before adverting to the merits of the controversy involved in the present petition, it would be relevant to refer to the statutory provisions relied upon by the parties.

Insolvency and Bankruptcy Code, 2016

Section-3. Definitions*.-In this Code, unless the context otherwise requires,—*

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(7) ***"corporate person"*** *means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;*

(8) ***"corporate debtor"*** *means a corporate person who owes a debt to any person;*

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(10) ***"creditor"*** *means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;*

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(23) ***"person"*** *includes-*

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a trust;

(e) a partnership;

(f) a limited liability partnership; and

(g) any other entity established under a statute, and includes a person resident outside India;

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(30) ***"secured creditor"*** *means a creditor in favour of whom security interest is created;*

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Section 14. Moratorium *(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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Section 17. Management of affairs of corporate debtor by interim resolution professional.*-*

(1) From the date of appointment of the interim resolution professional;

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified.

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

Section 18. Duties of interim resolution professional.- *The interim resolution professional shall perform the following duties, namely:—*

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

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Section 238. Provision of this Code to override other laws.- *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

The Consumer Protection Act, 1986

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15. Appeal.—*Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:*

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of

that amount or twenty-five thousand rupees, whichever is less.]

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17. Jurisdiction of the State Commission.—

[(1)] Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

[(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally

works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

***17A. Transfer of cases.**—On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.*

***17B. Circuit Benches.**—The State Commission shall ordinarily function in the State Capital but may perform its functions at such other place as the State Government may, in consultation with the State Commission, notify in the Official Gazette, from time to time.]*

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***19. Appeals** —Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:*

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has

deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less.]

19A. Hearing of appeal.—*An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:*

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

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21. Jurisdiction of the National Commission.— *Subject to the other provisions of this Act, the National Commission shall have jurisdiction—*

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds [rupees one crore]; and

(ii) appeals against the orders of any State

Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

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23. Appeal.*—Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:*

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.]

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25. Enforcement of orders of the District Forum, the State Commission or the National Commission.—

(1) Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not

complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.]

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27. Penalties.—

(1) Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which

may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

27A. Appeal against order passed under section 27.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from—

(a) the order made by the District Forum to the State Commission;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or,

> *as the case may be, the National Commission:*
>
> *Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.*

34. The two primary questions which arise for consideration before examining the prayer of the petitioners are:-

i) Whether the protection of Moratorium under Section 14 of the Insolvency of Bankruptcy Code, 2016 is also available to the Directors?

ii) Whether writ petition against an order passed by the State Commission under Section 27 of the Consumer Protection Act, 1986 would be maintainable?

35. While adverting to the first question as regards the protection of moratorium under Section 14 of IBC to the Directors of company is concerned, it is essential to refer to the provision of Section 14 already extracted above. It is not in dispute that Section 14 of the Insolvency and Bankruptcy Code declares the moratorium prohibiting the institution of suits or continuation of proceedings against the Corporate Debtor including the execution proceedings. The corporate debtor has been specifically defined under Section 3 (8). Corporate person has been defined under Section 3 (7) to means a company defined in Clause 20 (2) of the Companies Act.

36. It is evident that the protection of the moratorium under Section 14 has been extended to a "Corporate Debtor". The legislature

was conscious of the use of the phrase "person" and also defines the same in the Insolvency and Bankruptcy Code under Clause 23 of Section 3. However, the protection of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 has evidently not been extended to a 'person' and has been extended only to a corporate debtor. A perusal of the definition of a 'person' shows that it also includes a partnership; a limited liability partnership; a company and any other entity established under a statue. Hence, a wider definition of "person" has been preferred by the legislature in the statute. If the legislature intended to extend benefit of such protection to the Directors, there was no occasion or reason for the legislature to use a qualified expression "Corporate Debtor" while extending the protection of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.

37. Hence, exclusion of 'person' other than a 'corporate debtor' has to be construed as a conscious act of the legislature. It cannot be presumed that the exclusion of protection of moratorium to the Directors or any other natural person was an outcome of some negligence, omission or oversight. It is a conscious departure by the legislature which is conscious of the different expressions and yet chooses to qualify the protection. It also needs to be kept in mind that while dealing with the management of affairs of the 'Corporate Debtors' by the Interim Resolution Professions under Section 17, the management of the affairs of the Corporate Debtor as also the powers of Board of the Directors or the partners of Corporate Debtor are suspended and are vested in and to be exercised by the Interim Resolution Profession. The legislature is thus well aware of the existence of the Board of Directors/Management of the

'Corporate debtor' including the existence of the Directors and yet Section 14 is well qualified.

38. The Hon'ble Supreme Court in the matter of ***"P. Mohanraj & Others versus M/s Shah Brothers Ispat Private Limited"*** bearing **Civil Appeal No.10355 of 2018** reported as ***2021 (6) SCC 258,*** while dealing with the case arising out of Sections 138/141 of the Act of the Negotiable Instruments Act, 1881 held that the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 was available to the Corporate Debtor and that the criminal proceedings instituted under Section 141 against the Directors can continue. It was held that the protection of the Insolvency and Bankruptcy Code, 2016 would not extend to individual persons other than a Corporate Debtor. The relevant extract of the said judgment reads thus:

> "***WHETHER NATURAL PERSONS ARE COVERED BY SECTION 14 OF THE IBC***
>
> *Xx xxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxx*
>
> *Since the corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be*

initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."

39. Hence, the position in law laid by above judgment is that the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 does not extend to any person other than a Corporate Debtor and proceedings against them can continue.

40. The argument of the petitioner that the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 would be available to the "Director" of the "Corporate Debtor" is thus liable to be rejected in light of the statutory provision and the interpretation thereof by the Hon'ble Supreme Court.

41. The High Court, cannot in its power of judicial review under Section 226 of the Constitution of India cannot add words to statue by interpretation. The same would be an act of legislation.

42. The second question relates to the maintainability of the present petition against the warrants issued by the State Consumer Disputes Redressal Commission under Section 27 of the Consumer Protection Act, 1986.

43. The judgment in the matter of ***Nivedita Sharma and Cicily Kallarackal (supra)*** have ruled against remedy of filing of writ petition under the Consumer Protection Act, 1986 and mandate that the petition ought to be preferred before the statutory appellate forums available

under the Consumer Protection Act, 1986. The Division Bench Judgment of the Hon'ble Supreme Court in the matter of ***"Ibrat Faizan versus Omaxe Buildhome Private Limited"*** reported as ***2022 SCC OnLine SC 620*** rules that writ petition would be maintainable before the High Court under Article 227 of the Constitution of India. The relevant extract of the present judgment in the matter of "***Ibrat Faizan (supra*)** reads thus:-

> *13. In so far as the remedy which may be available under Article 136 of the Constitution of India is concerned, it cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution of India may be too expensive and as observed and held by this Court in the case of L. Chandra Kumar (supra), the said remedy can be said to be inaccessible for it to be real and effective. Therefore, when the remedy under Article 227 of the Constitution of India before the concerned High Court is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, may be a complainant, to approach the concerned High Court at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution.*
>
> *14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such*

jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97,*** *which has been consistently followed by this Court (see the recent decision of this Court in the case of* ***Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29).*** *Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.*

44. The earlier judgments of Nivedita & Cicily (supra) have not been referred by the Hon'ble Supreme Court in the judgment of *"**Ibrat Faizan (supra).*** It is well settled position in law that when there are two divergent opinions of the Hon'ble Supreme Court emanating from Benches of co-equal strength, the High Court should follow the one which in its view is better in expounding a point of law. The said position in law was expounded by the Constitutional Bench of the Hon'ble Supreme Court in the case of "***Atma Ram versus State of Punjab***" reported as ***AIR 1959 SC 519***. The relevant extract of the above judgment reads thus:-

"Perhaps, the better course would have been to

> *constitute a larger Bench, when it was found that a Full Bench of three Judges, was inclined to take a view contrary to that of another Full Bench of equal strength. Such a course becomes necessary in view of the fact that otherwise the subordinate courts are placed under the embarrassment of preferring one view to another, both equally binding upon them. In our opinion, the view taken by the earlier Full Bench is the correct one."*

45. The said judgment has not been over ruled or set aside by the Hon'ble Supreme Court in any subsequent or larger Bench. Hence, the legal position remains uncontroverted that where judicial precedents of co-equal strength are irreconcilably in conflict, a Court has the freedom to pick and choose between them. It may refuse to follow the later decision on the ground that it was arrived at per inquirium or it may follow such decision on the ground that it is the latest authority. Which of these two courses the Court adopts would depend upon its acceptance or acknowledgment of one view.

46. The consistent view of the Hon'ble Supreme Court in the matter of <u>*Nivedita Sharma*</u> and <u>*Cicily Kallarackal*</u> is that writ jurisdiction would not be maintainable in the cases relating to Consumer Protection Act. In the matter of Ibrat Faizan, however, a relaxation has been prescribed. It would thus be essential to examine the contours of the above judgment.

47. The Hon'ble Supreme Court has held in the above judgment that where the remedy before the Supreme Court is under Article 136 of the Constitution of India, the person may approach the High Court under Article 227 of the Constitution of India. The said judgment however

does not held that the writ petition under Article 227 would be maintainable even when a statutory remedy of appeal is available under the Act. The said judgment also goes on to say that jurisdiction to be exercised by the High Court is the limited jurisdiction of superintendence under Article 227. Hence, the High Court does not sit in re-appraisal of the evidence or exercise of its power of issuing prerogative writs. The jurisdiction vested in High Court under Article 227 of the Constitution of India is a supervisory revisional jurisdiction as per the law laid down by the Hon'ble Supreme Court of India in the matter of "***Sushilabai Laxminarayan Mudliyar versus Nihalchand Waghajibhai Shaha"*** reported as ***(1993) Supp (1) SCC II***. The same is not an exercise of Power under Article 226 of the Constitution of India. It was held by the Hon'ble Supreme Court in the matter of "***S.K. Mohd. Umarsaheb versus K.H. Karimsab***" reported as ***AIR 1970 SC 61*** that the power of general superintendence conferred by Article 227 involves a duty to keep all Courts & Tribunals within its jurisdiction in the bounds of their authority, to see that they do what their duty requires and that they do in a legal manner. The power would not be exercised to correct an error of fact or law unless such error is apparent on the face of the record or affects the jurisdiction or demonstrates grave injustice. It does not vest the High Court with any unlimited prerogative to correct Hardships. Hence, High Court would not substitute its view only because it seems more attractive, for the view of the subordinate Court/Tribunal once such view is also a possible view. A finding of fact is not to be interfered with unless the same is perverse, not based on any material what so ever or is vitiated by misdirection of law; or is against preponderance of evidence resulting in manifest injustice as held by Hon'ble Supreme Court in the matter of "***Khalil Ahmed Bashir Ahmed versus Tufelhussein Samasbhai Sarangpurwala***" reported as ***AIR 1988 SC 184***.

48. The Hon'ble Supreme Court held in the matter of *"Shalini Shyam Shetty versus Rajendra Shankar Patil"* reported as ***(2010) 8 SCC 329*** as under:-

> "*We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by turning them a Writ petition. This is sought to be justified on erroneous appreciation of the ratio in "**Surya Dev Rai versus Ram Chander Rai** reported as **(2003) 6 SCC 675**...."*

49. The above passage has been quoted with approval in the matter of ***"Radhey Shyam versus Chhabi Nath"***reported as (2015) 5 SCC 423.

50. Hence, the position in law which arises from above is that a writ jurisdiction akin to jurisdiction under Article 227 of the Constitution may be invoked where the remedy otherwise would be to approach Supreme Court under Article 136 of the Constitution of India and not in cases where remedy of appeal is otherwise prescribed under the statute i.e. the Consumer Protection Act, 1986 as in the present case.

51. The judgment of *Ibrat Faizan (supra*) would not, in my considered opinion, permit invoking writ jurisdiction where statutory remedy of appeal is provided. The object of the latter judgment is to provide a cost effective remedy to approach the High Court instead of Supreme Court. Hence, in light of judgment of High Court in the matter of "Ibrat Faizan" (supra) the High Court, in its supervisory powers under

Article 227 of the Constitution of India, would be entitled to entertain a Writ against orders where statutory remedy of appeal is not available and the remedy is only by way of approaching the Hon'ble Supreme Court under Article 136 of the Constitution of India.

52. The above view is also fortified from the well settled legal position that even though existence of alternative remedy may not be a bar to entertain a writ petition, however, where an efficacious and alternative remedy is available, it would not be appropriate to entertain a writ petition. The judgment of 'Ibrat Faizan' effectively confers only a revisional jurisdiction on the High Court against order and that too of the National Consumer Commission and not against every other order.

53. Additionally, similar controversy also came up before this Court in the matter of ***"Rajinder Kumar Gautam and another versus State Consumer Disputes Redressal Commission, U.T. Chandigarh"*** bearing ***CWP No. 22539 of 2021*** *decided on* ***27.05.*****2022** wherein this Court was dealing with the issue of the proceedings instituted against the developer under the Consumer Protection Act where the management had been jointly and severally held liable. The proceedings under Section 27 of the Consumer Protection Act, 1986 had been initiated and warrants of arrest had been issued for producing the petitioners therein before the State Commission to face the trial when the writ petitions were preferred. This Court while dealing with the said issue dismissed the writ petitions by holding that the proceedings against the petitioners can be continued for their prosecution under Section 27 of the Consumer Protection Act. The relevant extract thereof reads thus:

> *"Hence, irrespective of the fate of the proceedings pending before the NCLT or the effect of order of*

moratorium qua the Corporate Debtor, the proceedings against the petitioners can very well be continued for their prosecution under Section 27 of the Act. Although the counsel for the petitioners has submitted that the judgment of Hon'ble the Supreme Court in the case of ***Anjali Rathi (supra)*** *is not applicable in the present case because in that case the proceedings against the promoters of the Corporate Debtor were held to be permissible only for any future violation of the settlement arrived at before Hon'ble the Supreme Court, and the Hon'ble Supreme Court had declined to issue any directions in that regard because the matter was still pending adjudication before the adjudicating authority, however, this Court finds that the said observations were made by the Supreme Court in the particular facts of that case. However, so far as the legal proposition is concerned, that has been well clarified in the aforesaid paragraph 15 of the said judgment. The counsel for the petitioners has also stressed upon the fact that another SLP is still pending before the Supreme Court, however, in the opinion of this Court, once the legal proposition has been clarified by the Supreme Court in case of* ***Anjali Rathi (supra),*** *then there is no need to keep these petitions pending anymore.*

Although the counsel for the petitioners had raised another point that the petitioners were not parties before the Commission at the time of the passing of the judgment/order of liability and they have been introduced as respondents subsequently even during the execution proceedings, therefore, they cannot be held liable for the liability as such, however, at this stage, the counsel for the petitioners has submitted that he does not wish to press this argument, rather, he would take the said defence before the State Consumer Commission, if the need be."

54. The issue which thus arises is whether the present petition would be maintainable at this juncture when an efficacious alternative

remedy is available under the statute.

55. In the proceedings that have been instituted under Section 27 of the Consumer Protection Act, 1986 an aggrieved has the remedy of an appeal to the National Consumer Disputes Redressal Commission against the orders passed by the State Commission as per Section 27-A of the Act. Resultantly, a statutory remedy of appeal is available to the petitioners against the order made by the State Commission and which are subject matter of challenge in the present petition(s).

56. Since it has been brought before this Court that the petitioner(s) were parties in some of the complaints and the award in question had also been passed against them and that a statutory remedy of appeal/revision under Section 27 A (1)(b) of the Consumer Protection Act, 1986 is available to the petitioners, the present petitions are dismissed as being not maintainable. Liberty is granted to the petitioners to take recourse to alternative remedy available to them in accordance with law before filing writ petition.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 23, 2022
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No