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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 932/2022 & CM APPL. 39695/2022, CM APPL. 39696/2022

RCI INDUSTRIES AND TECHNOLOGIES LTD..... Petitioner
Through: Mr. Mohit Chaudhary and Ms. Mahima Ahuja, Advs.

versus

ADJUDICATING AUTHORITY (NCLT-III) & ORS.
..... Respondents
Through: Mr. Krishnendu Datta, Sr. Adv.
with Ms Vatsala Rai, Adv. for Respondent 2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **12.09.2022**

1. The prayer in this petition, under Article 227 of the Constitution of India, is essentially to guide the learned National Company Law Tribunal ("the learned NCLT") on how to adjudicate cases pending before it.

2. Such a prayer, in my view, is completely untenable in law and an attempt at even countenancing such a prayer would amount to serious judicial overreach.

3. The proceedings emanate from a petition under Section 9 of the Insolvency and Bankruptcy Code (IBC), instituted by the Standard Chartered Singapore (SCS) before the learned NCLT. It appears that,



on the basis of transactions covered by invoices issued between 28th September 2018 and 6th January 2019, SCS contended that the petitioner owed, to it, an amount of ₹ 22 crores. In view of the alleged default of the petitioner in liquidating the said debt, SCS apparently invoked the provisions of the IBC.

4. The petitioner has sought to contend, before the learned NCLT, that the documents cited by SCS in its support could not be relied upon in view of Sections 33 and 35 of the Indian Stamps Act, 1899¹.

¹ **33. Examination and impounding of instruments.** — (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1989);
- (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, —

- (a) the State Government may determine what offices shall be deemed to be public offices; and
- (b) the State Government may determine who shall be deemed to be persons in charge of public offices.

35. Instruments not duly stamped inadmissible in evidence, etc. — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

- (a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;



5. IA 1408/2022 was filed by the petitioner, highlighting the staid objection. The application exhorted the learned NCLT to examine the aforesaid documents in terms of Section 33(1) and 33(2) of the Stamp Act and to rule, even at that interlocutory stage, that, as the documents were not stamped in terms of Sections 33 and 35 of the Indian Stamp Act, they could not be relied upon.

6. The objection was rejected by the learned NCLT *vide* order dated 21st April 2022. The learned NCLT opined that, in view of Section 238 of the IBC², which had, according to the petitioner, overriding effect over the provisions of the Stamp Act, the prayer of the petitioner was not sustainable.

7. The petitioner appealed against the said decision of the learned NCLT before the learned National Company Law Appellate Tribunal (“the NCLAT”).

8. The appeal was disposed of, by the learned NCLAT *vide* order

(c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (V of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

² **Section 238 Provisions 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.



dated 5th May 2022, which reads thus:

“05.05.2022: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.

2. This Appeal has been filed against the order dated 21.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench, Court-III in I.A-1408 of 2022 which was filed by the Appellant. I.A was filed by the Appellant when proceedings in IB-2688/(ND)/2019 were part heard and the Court was proceeded to hear the parties.

3. Learned Counsel for the Respondent submits that the issues which were sought to be raised by the Appellant in IA-1408 of 2022 has already been submitted by the Respondent before the Court during the course of the submission. It is submitted that there was no necessity to file Application which was only filed to delay the proceedings.

4. In view of the facts as noted above, we are of the view that the order of rejection passed by the Adjudicating Authority on the Application need no interference in this Appeal. We, however, make it clear that any observations made by the Adjudicating Authority while rejecting the Application I.A-1408 of 2022 have no bearing when the issues are decided by the Adjudicating Authority in accordance with law and merits. All contentions of both the parties are left open.

5. With these observations, the Appeal is dismissed.”

9. The petitioner is thus back before the learned NCLT.

10. The petitioner’s grievance is that the learned NCLT is ignoring Sections 33 and 35 of the Stamp Act, in proceeding with the matter. The said provisions were to be taken into account, submits Mr. Mohit Chaudhary. It would become clear that the documents on which SCS



seeks to base its case cannot be relied upon at all.

11. The matter being at this stage, the petitioner has moved the present petition under Article 227 of the Constitution of India, with the following prayer :

“In view of the facts and circumstances of the present case, it is most respectfully prayed that this Hon'ble Court may be pleased to:

1. Issue appropriate Order or Direction, to regulate practice and proceedings before Adjudicating Authority (NCLT-III), New Delhi, in respect of the procedure where the provisions of stamp act are urged, and/or

ii. Issue appropriate Order or Direction, upon Adjudicating Authority (NCLT-III), New Delhi, to consider the prayers of impounding of the documents in terms of the provisions of Stamp Act before proceeding in merits of the matter, and/or

iii. Issue appropriate Order or Direction, upon RBI to check and take remedial measures to avoid the business of factoring being done in violation of 'Factoring Regulation Act, 2011' by unregistered entity. And/or

iv. Issue appropriate Order or Direction, upon the Chief Controlling Revenue Authorities through Collector of Stamps/ 'Sub Divisional Magistrate to assess the stamp duty payable on the assignment documents being 'receivables purchase agreement' and 'factoring agreement' which is being produced before the Courts/Tribunals in India for execution, by undertaking the process of law, And/Or

v. Issue appropriate Order or Direction, declaring that the proceedings being CP (IB) No.2688 of 2019 pending before NCLT-III, New Delhi is without jurisdiction, and/or

vi. Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”



12. It appears that the petitioner has completely misconstrued the scope of Article 227 of the Constitution of India. Article 227 is a power which recognises the superintending jurisdiction of the High Courts over courts or judicial fora hierarchically below it. The jurisdiction vested by the Article 227 of the Constitution of India is supervisory in nature. Where authorities who are subject to the superintendence of the High Court function in a manner which calls for supervisory correction, the High Court can step in. In no other circumstance is the High Court expected to exercise jurisdiction under Article 227.

13. The scope of Article 227 may be chartered through a scan of five decisions, namely, *Estralla Rubber v. Dass Estate (P) Ltd.*³, *Garment Craft v. Prakash Chand Goel*⁴, *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁵, *Puri Investments v. Young Friends and Co.*⁶ and *Sadhana Lodh v. National Insurance Co. Ltd*⁷, the relevant paragraphs of which may be reproduced thus:

Estralla Rubber³

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁸ in para 12 has stated that *the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors.* Reference also has been made in this regard to the case *Waryam Singh v. Amarnath*⁹. This Court in *Bathutmal*

³ (2001) 8 SCC 97

⁴ 2022 SCC Online SC 29

⁵ 2022 SCC Online SC 620

⁶ 2022 SCC Online SC 283

⁷ (2003) 3 SSC 524

⁸ AIR 1972 SC 1598

⁹ AIR 1954 SC 215



Raichand Oswal v. Laxmibai R. Tarte¹⁰ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that *the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal.*”

(Emphasis supplied)

Garment Craft⁴

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [***Prakash Chand Goel v. Garment Craft***¹¹] is contrary to law and cannot be sustained for several reasons, but *primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India*. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. *Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*¹²]. *The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*

16. Explaining the scope of jurisdiction under Article 227, this Court in ***Estralla Rubber v. Dass Estate (P) Ltd***³ has observed: (SCC pp. 101-102, para 6)

¹⁰ AIR 1975 SC 1297

¹¹ 2019 SCC OnLine Del 11943

¹² (2010) 1 SCC 217



“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. *The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.* It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

(Emphasis supplied)

Ibrat Faizan⁵

“28. 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***³, 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***⁴. 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.”

Puri Investments⁶

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. *The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —*



- (i) *Erroneous on account of non-consideration of material evidence, or*
- (ii) *Being conclusions which are contrary to the evidence, or*
- (iii) *Based on inferences that are impermissible in law.*

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

(Emphasis supplied)

Sadhana Lodh⁷

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined *only to see whether an inferior court or tribunal has proceeded within its parameters* and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

(Emphasis supplied)

14. Article 227, therefore, does not even permit the High Court to examine the correctness of the order under challenge. All that the High



Court can examine is whether the authority passing the order has actually acted in a manner which calls for supervisory correction. The factual or legal correctness of the order becomes a subject of consideration under Article 227 only where the manner in which the facts or law has been applied is so manifestly illegal as would require the High Court to correct the erroneous impression of fact or law harboured by the court below. Else, findings of facts or law are not amenable to challenge or reversal in exercise of the jurisdiction vested in the High Court by Article 227 of the Constitution of India.

15. The court, while exercising jurisdiction under the said provision, is more concerned with that the *processual* correctness of the order passed by the court below, rather than the *factual* or the *legal* correctness thereof.

16. In the present case, ironically, the petitioner does not challenge any order of the learned NCLT which is presently holding fort. The petition itself is in fact manifestly premature.

17. The learned NCLT has adequately taken a view, albeit at an interim stage, that Section 238 of the IBC would prevail over Sections 33 and 35 of the Stamp Act. That view may be right or may be wrong. The petitioner appealed against the said decision. The learned NCLAT has relegated the petitioner to the learned NCLT keeping in mind all issues of fact and law alive. The learned NCLAT has wiped the slate clean. The *tabula* is, thus, once more *rasa*. It is open, therefore, to the petitioner to again attempt to convince the learned NCLT regarding the interpretation that the petitioner seeks to place on Sections 33 and



35 of the Stamp Act.

18. The learned NCLAT has already protected the petitioner in that regard, by directing that the learned NCLT would proceed in the matter uninfluenced by the order passed by it on 21st April 2022.

19. That is about all that the petitioner can expect at this juncture. It is for the petitioner to press its case before the learned NCLT. Equally, it would be open to the respondent to contest the case that the petitioner seeks to put up.

20. It is for the learned NCLT to take a call, *de novo*, on the applicability of the Stamp Act vis-a-vis the IBC, after hearing both sides.

21. The grounds that either party, aggrieved by the decision that the learned NCLT may take, would remain open.

22. Beyond this, the court cannot come to the aid of the petitioner, as it would be completely improper for the court to direct the manner in which the learned NCLT exercises its jurisdiction or to guide the view that the learned NCLT would take on the rival contentions of the parties.

23. No case, therefore, exists for this court to interfere at this stage, under Article 227 of the Constitution of India.



24. With the aforesaid observations, this petition is accordingly disposed of.

C. HARI SHANKAR, J.

SEPTEMBER 12, 2022

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