

OD-4

ORDER SHEET

WPO/771/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUJIT BANERJEE
VERSUS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : January 6, 2023.

Appearance:
Mr. Niloy Sengupta, Adv.
...for the petitioner

Mr. Nandlal Singhania, Adv.
Mr. S. K. Tiwari, Adv.
...for the State

The Court:- The petitioner is a financial creditor who moved the National Company Law Tribunal Bench, Kolkata by filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016. Such application was filed on December 6, 2021. The petitioner was not aware of the notification which have come into force prior to filing of the application, by which the financial threshold of the National Company Law Tribunal had been increased to Rs.1 crore and above. As the claim of the petitioner was approximately Rs.33 lakhs, the petitioner could not have approached the National Company Law Tribunal at the relevant point of time. The said application was mistakenly filed due to ignorance of the notification dated March 24, 2020.

Immediately upon realizing the mistake, the petitioner approached the Pay and Accounts Officer, Ministry of Corporate Affairs, Pariyavaran Bhawan, New Delhi as also the Registrar, National Company Law Tribunal, Kolkata for refund of the application fee of Rs.25,000/- which was paid online by e-filing mode and was credited to the account maintained by the Pay and Accounts Officer, Ministry of Corporate Affairs, Pariyavaran Bhawan, CGO Complex, New Delhi.

It was prayed that the amount transmitted by the petitioner be reversed to the petitioner's account. The account details of the petitioner was intimated to the authority by the learned advocate for the petitioner by a letter dated January 20, 2022.

The authority did not respond to the said letter. The matter came up before the Bench of NCLT and by an order dated March 22, 2022 the learned Tribunal allowed the petitioner to withdraw the petition on the ground that the petition was not maintainable before the learned Tribunal as the amount claimed by the financial creditor was below the threshold limit of Rs.1 crore. However, the learned Bench did not pass any orders with regard to refund of the fees.

The Pay and Accounts Officer, Ministry of Corporate Affairs intimated the petitioner that neither the Insolvency Code nor the NCLT Rules envisaged refund of court fees filed even though the matter was withdrawn due to lack of jurisdiction.

Learned counsel for the Union of India submits that as the Court Fees Act does not have any application to the present case and

there was no mistake on the part of the authorities, the amount cannot be refunded.

For all practical purposes, the NCLT Kolkata is an adjudicating body and the fees payable cannot, but, be akin to court fees to be deposited by a financial creditor for adjudication of the dispute. Return of court fees paid in excess or wrongly deposited in a Court has always been permitted by the Courts in exercise of their inherent jurisdiction. In this case, the Writ Court under article 226 of the Constitution of India has the power to direct the respondents to refund the court fees/application fees which was wrongly deposited by the petitioner before the concerned respondent at the time to filing of the application. Once the application was allowed to be withdrawn by the learned Tribunal with the observation that the same was not maintainable as the financial threshold had not been met, the order amounts to return of a plaint and as such the court fees/application fees ought to have been refunded.

Section 196(3) of the Insolvency and Bankruptcy Code, 2016 provides that the Board shall have the same powers vested with the Civil Court under the Code of Civil Procedure, while trying a suit.

Even if the Court accepts Mr. Singhania's contention that neither the Insolvency and Bankruptcy Code nor the National Company Law Tribunal Rules expressly provide for refund of the court fees, there is also no express bar. This is a case of return of plaint. It is no doubt true that the petitioner would have to approach the appropriate forum i.e. the Civil Court by filing a money suit by putting in proper court fees. The law

cannot be interpreted in such a manner that the financial creditor would have to pay the court fees twice over.

The decision in the matter of *Nagpur District Central Co-operative Bank Ltd and Another -vs- Union of India and Others* reported in *2020 SCC online Bombay 304* clearly covers the situation of like nature. The Debts Recovery Tribunal was directed to return the fees deposited by the petitioner therein after the proceedings were returned for presentation to the competent forum as the Debts Recovery Tribunal did not have the jurisdiction to entertain the recovery proceeding.

The withdrawal of the application on the ground of same having been filed in the wrong forum amounts to a simple return of plaint by a Civil Court and as such, the court fees should also be returned to the petitioner. Accordingly, the writ petition is allowed.

The respondent nos. 2 and 3 are directed to take immediate steps to reverse/repay/transfer the amount of Rs.25,000/- paid online through e-portal of the National Company Law Tribunal, to the bank account of the petitioner as stated in paragraph 5 of the writ petition.

The writ petition is allowed.

Parties to act on a server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of the requisite formalities.

[SHAMPA SARKAR, J.]