R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11688 OF 2023

Central Board of Trustees of EPFO .. Petitioner

Versus

Vineet Kumar Chowdhary .. Respondent

....

- Mr. Ravi Rattesar for Petitioner
- Mr. Chetan Kapadia, Senior Advocate a/w Mr. Rohan Agarwal, Mr. Anuj Jhaveri and Mr. Mihir Modi for Respondent No. 1

....

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 13, 2023

P.C.:

1. Heard Mr. Rattesar, learned Advocate for Petitioner and Mr. Kapadia, learned Senior Advocate for Respondent No. 1 – Original Liquidator.

2. Present Petition challenges an order dated 15.07.2022 passed by the National Company Law Tribunal, Mumbai Bench (for short **"NCLT"**) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short, "**IBC**") whereby orders dated 05.03.2020 and 06.03.2020 passed by Petitioner demanding payments to be made by Respondent No. 2 were quashed and set aside in view of the same being in violation and contravention of the moratorium imposed under Section 14 of IBC upon initiation of CIRP against Respondent No. 2.

3. At the outset, Mr. Kapadia, learned Senior Advocate for

Respondent would submit that the present Petition is not maintainable in view of the statutory alternate remedy available to the Petitioner to challenge the impugned order before the National Company Law Tribunal under Section 61 of the IBC.

4. Briefly stated the facts are as follows:-

4.1. On 23.03.2018 NCLT passed order admitting C.P. No. 1374/2017 and, *inter alia,* a corporate insolvency resolution process was initiated against Respondent No. 2. On 23.01.2020 NCLT passed order directing initiation of liquidation process against Respondent No. 2. Respondent No. 1 was appointed as liquidator of Respondent No. 2. On 05.03.2020 order was passed by Petitioner under Section 7Q of the EPF & MP Act, 1952 demanding payment of Rs. 1.48 Crores from Respondent No. 2 failing which Petitioner would initiate recovery action. On the same date, order was passed by Petitioner under Section 14B of the EPF & MP Act demanding payment of Rs. 2.14 Crores from Respondent No. 2 failing which Petitioner threatened to initiate recovery action.

4.2. On 06.03.2020 order was passed by Petitioner under Section 7A of the EPF & MP Act demanding payment of Rs. 3.41 Crores from Respondent No. 2. On 15.07.2022 the impugned order was passed by NCLT in I.A. No. 1696 of 2020 and I.A. No. 1085 of 2020 whereby orders dated 05.03.2020 and 06.03.2020 were quashed and set aside *inter alia* in view of the same being in violation and contravention of the moratorium imposed under Section 14 of the IBC upon initiation of CIRP against Respondent No. 2. Being aggrieved by passing of the impugned order, present Petition has been filed on 20.03.2023 by Petitioner.

5. I have heard the learned Advocates for the parties and considered the impugned order. It is seen that upon initiation of CIRP, a moratorium as prescribed under Section 14 of the Code gets attracted which *inter alia* prohibits institution or continuance of any legal proceedings against a Corporate Debtor. Hence, demand notices raised by Petitioner after 23.03.2018 i.e. the CIRP date of commencement are in contravention of the moratorium imposed.

6. Provisions of Sections 61 and 62 of IBC are relevant and reproduced below for immediate reference:-

> ***"61. Appeals and Appellate Authority***
>
> *(1) Notwithstanding anything to the contrary contained under the Companies Act ,2013, any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*
>
> *(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*
>
> *PROVIDED that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.*
>
> *(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:-*
>
> *(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

62. Appeal to Supreme Court

(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days."

6.1. Section 61 of IBC provides that any person aggrieved by an order passed by NCLT may prefer Appeal to the National Company Law Appellate Tribunal (**NCLAT**) within the period and in the manner as prescribed therein. Section 62 of IBC further provides that any person aggrieved by order of NCLAT may file an Appeal to the Supreme Court within the period and in the manner as prescribed therein. Discretion to condone the delay upto 15 days is with the NCLAT and Supreme Court only statutorily.

7. It is settled law that Petitions invoking writ jurisdiction of High Courts are not entertained when an efficacious alternative remedy is available. The Writ Court applies its rule of self-imposed limitation and discretion, rather than a rule of law. The Supreme Court of India has consistently held that High Courts must not entertain writs if there is an adequate efficacious alternative remedy available to the Petitioner. The present Petitioner has approached the High Court despite the Appeal remedy being provided by statute. Petition is filed on 20.03.2023. No exceptional case warranting such interference exists to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India.

8. In view of the aforesaid observations and considering the extant provisions alluded to herein above, I am not inclined to accept the submissions of Mr. Rattesar, learned Advocate for Petitioner on maintainability. Petitioner cannot be allowed to circumvent the statutory remedy and invoke extraordinary jurisdiction of this Court in the facts of the present case.

9. Petition dismissed.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2023.10.13 19:09:04 +0530