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W.P.No.2476 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.2476 of 2023
and W.M.P.No.2579 of 2023

CA.V.Venkata Siva Kumar

... Petitioner

Versus

1. IDBI Bank Limited

Represented by Mrs.K.Bhoomalakshmi
General Manager

2. Insolvency Bankruptcy Board of India (IBBI)

Represented by Deputy General Manager

3. Indian Institute of Insolvency Professionals
of ICAI (IIPI)

Represented by Managing Director

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Declaration declaring that the impugned order passed by the NCLAT, Chennai Bench in CA (AT) (Ins)269 of 2022, dated 20.12.2022 and the consequential order passed by the NCLT, Chennai Bench-II in IA/815/2020, dated 01.07.2022 Non-Est, nullity, void-ab-initio.

For Petitioner : Mr.CA.V.Venkata Siva Kumar,
party-in-person

For Respondents : Mrs.Vinithra Srinivasan, for R1



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Mr.K.S.Jayaganesan,
Standing Counsel for R2

ORDER

D.BHARATHA CHAKRAVARTHY, J.

A. Brief facts leading to the filing of the Writ Petition:

The petitioner is a *Chartered Accountant* and an empaneled *Resolution Professional*. *IDBI Bank Limited*, as the *Financial Creditor*, initiated proceedings against one *Jeypore Sugar Company Limited* by way of an application under Section 7 of *The Insolvency and Bankruptcy Code, 2016* (hereinafter referred to as '*IBC*') before the *National Company Law Tribunal, Chennai* (hereinafter referred to as '*NCLT*'). By an order, dated 25.02.2019, the said application was admitted and Corporate Insolvency Resolution Proceedings were initiated against the said Company and the petitioner was appointed as *Interim Resolution Professional* and thereafter, in the CoC, in their meeting, agreed that he was retained as the *Resolution Professional*. Since revival plan was not accepted, the Tribunal ordered Liquidation of the Company and the proceedings are pending in CP/1307/IB/2018. By an order, dated 29.05.2020, the petitioner was appointed as its *Liquidator*.



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1.2. While so, the first respondent, *IDBI Bank Limited*, moved an application in IA/815/IB/2020, under Section 60(5) of the *IBC*, *inter alia*, for removal of the petitioner from acting as *Liquidator*. It was the contention of the respondent Bank that as a *Liquidator*, he had shared the valuation report with the prospective scheme proponents and he also suppressed the fact that he does not possess a valid authorization as per Regulation 7A of the *Insolvency and Bankruptcy Board of India (Resolution Professionals) Regulations, 2016*. The petitioner resisted the said application questioning the authority of the respondent Bank and also the maintainability of the above application.

1.3. By an order, dated 01.07.2022, the *NCLT* held that the Tribunal, being the appointing authority, shall also have the power to remove the *Liquidator*. The *NCLT* considered that the allegations are serious and the petitioner did not even deny the same and contended that *Resolution Professionals* alone are precluded from sharing the report and therefore, ordered removal of the petitioner and appointed one *Mr.S.Hari Karthik*, as the *Liquidator* in the place of the petitioner.



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1.4. In the meanwhile, the *Indian Institute of Insolvency Professionals / Institute of Chartered Accountants of India*, had, by an order, dated 01.12.2020, found the petitioner guilty of misconduct and imposed a fine of Rs.10,000/-. Aggrieved by the said order, the petitioner preferred an appeal before the *Insolvency and Bankruptcy Board of India*, which also rejected the appeal by an order, dated 17.12.2020. Aggrieved by the same and praying for compensation, the petitioner preferred two Writ Petitions before this Court in W.P.Nos.4458 and 4463 of 2021 and by an order, dated 26.02.2021, an interim order of injunction, restraining the respondents, their servants or agents or any other person from taking any coercive action on account of the orders impugned in the Writ Petitions, was granted and the Writ Petitions are pending.

1.5. As against the said order of the *NCLT*, the petitioner preferred an appeal under Section 61 of the *IBC* before the *National Company Law Appellate Tribunal, Chennai Bench* (hereinafter referred to as '*NCLAT*') in Company Appeal (AT) (CH) (Ins.)No.269 of 2022. By an order, dated 20.12.2022, the *NCLAT* found that the appointing authority has the power of



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removal; the *Liquidator* does not have any personal right to continue in the Liquidation process; the interim injunction passed by the Madras High Court is only in relation to the Disciplinary Proceedings initiated against the petitioner; the appellant did not possess the legally required Authorization for Assignment as per the regulations and dismissed the appeal filed by the petitioner. Feeling aggrieved, the present Writ Petition is filed by the petitioner.

B. The Submissions :

2. Heard *Mr.CA.V.Venkata Siva Kumar*, the *party-in-person* and *Mrs.Vinithra Srinivasan*, learned Counsel appearing on behalf of the first respondent and *Mr.K.S.Jayaganesan*, learned Standing Counsel appearing on behalf of the second respondent.

2.1. *Mr.CA.V.Venkata Siva Kumar*, the *party-in-person*, taking this Court through his written submissions, submitted that when Disciplinary Proceedings were taken against him, this Court had interfered in the matter and granted injunction. In defiance of the injunction order, the present proceedings are initiated and therefore, the impugned orders are *per se*



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contemptuous. Secondly, the argument in the application filed by the Bank, that he lacks authority under the regulations, is also without any merit. When he has not committed any error, the bank officials have willfully filed the application and the *NCLT* and the *NCLAT* erred in passing the impugned orders. He would further submit that the power of this Court under Article 226 of the Constitution of India cannot be taken away by any statute and therefore, inspite of provision for an appeal to the Hon'ble Supreme Court of India under Section 62 of the *IBC*, still this Court has powers to entertain this Writ Petition challenging the orders of the *NCLAT* and the *NCLT*, more so, when they have been passed in violation of the injunction order granted by this Court.

2.2. In support of his contentions, the *party-in-person*, relied upon a judgment of the Hon'ble Supreme Court of India in ***Indiabulls Housing Finance Ltd. Vs. IIRF India Realty XII Ltd. and Ors.***¹ (C.A.No.9062 of 2022), placing reliance on page No.16 of the said judgment. He also relied upon a judgment of the Hon'ble Supreme Court of India in ***Embassy Property Developments Private Ltd. Vs. State of Karnataka and Ors.***²,

¹ MANU/SCOR/130213/2022

² (2020) 13 SCC 308



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more particularly paragraph Nos.8, 9 and 52, questioning the propriety of the orders passed by the *NCLT* and the *NCLAT*. To press home the point that an order, passed in violation of the interim order of the Court, is a nullity, he relied upon a judgments of the Hon'ble Supreme Court of India in *Amar Kumar Behera Vs. State of Odisha and Ors.*³ and *Ram Kumar Vs. State of Uttar Pradesh and Ors.*⁴. He would also submit that already contempt proceedings have also been initiated and the same are also pending.

2.3. Opposing the said submissions, *Mrs.Vinithra Srinivasan*, would submit that as against the order passed by the *NCLAT* under Section 61 of the *IBC*, an appeal is provided to the Hon'ble Supreme Court of India under Section 62 of the *IBC* and therefore, the present Writ Petition is not maintainable. As far as the interim order of this Court is concerned, she would submit that the same relates to the Disciplinary Proceedings against the petitioner and does not in any manner relate to his removal as *Liquidator* in a particular case. She would submit that service of the *Resolution Professional / Liquidator* is a professional service like that of a

3 2022 SCC OnLine Ori 780

4 2022 SCC OnLine SC 1312



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Conciliator or an Advocate and the petitioner, in the first place, cannot insist that he would alone continue to be in service when the parties do not wish his continuance. In any event, the *NCLT* and the *NCLAT* have gone into the allegations against him and also on the requirements as per the regulations and passed orders on merits. The petitioner has chosen to file an appeal before the *NCLAT* under Section 61 of the *IBC* as against the order passed by the *NCLT* under Section 60(5) of the *IBC*. If so, he has no other option than to file an appeal before the Hon'ble Supreme Court of India under Section 62 of the *IBC*.

C. The Findings :

3. We have considered the rival submissions made on either side and perused the material records of the case. At the outset, we find that the earlier Writ Petitions in W.P.Nos. 4458 and 4463 of 2021 are entertained by this Court as they relate to the orders passed by way of Disciplinary Proceedings against the petitioner as per the relevant regulations and *prima facie*, we are of the view that the interim order of this Court, dated 26.02.2021, is an interim order of injunction restraining the respondents, their servants or agents or any other person from taking any coercive action



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against the petitioner on account of the orders impugned in the Writ Petition and therefore, if an action, taken pursuant to disciplinary action, alone will be violative of the injunction order and in this case, the application is filed on allegations of disclosing the valuation report etc., and therefore, will not fall within the prohibition granted by this Court. This finding is *prima facie* rendered because the same is cited as an extra-ordinary reason to entertain the Writ Petition under Article 226 of the Constitution of India. As otherwise, it is clear that when an appeal from an order passed by the *NCLAT* under Section 61 of the *IBC* lies before the Hon'ble Supreme Court of India as per Section 62 of the *IBC*, the Writ Petition before this Court cannot be entertained. The same is a settled legal position and useful reference in this regard can be made to paragraph No.9 of the judgment of the Hon'ble Supreme Court of India in ***Cicily Kallarackal Vs. Vehicle Factory***⁵, which reads as follows:-

" 9. While declining to interfere in the present special leave petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the orders of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27-A(1)(c) lies to this

⁵ (2012) 8 SCC 524



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Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be a proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission."

D. The Result :

4. Therefore, we do not render our findings on the other contentions raised by the parties on merits of the impugned orders as we deem it fit to dismiss the Writ Petition with liberty to the petitioner to file an appeal as per Section 62 of the *IBC* before the Hon'ble Supreme Court of India and agitate all the grounds raised therein. However, there shall be no orders as to costs. Consequently, the connected miscellaneous petition is closed.

(T.R., ACJ.)

(D.B.C., J.)

01.02.2023

Index : yes

Speaking order

Neutral Citation : yes

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**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

grs

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