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W.P.Nos.4313 of 2019 & 34141 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.4313 of 2019 & 34141 of 2018

Sripathmanathan Sriharan,
Ex-Managing Director,
Malabar Hotels Pvt. Limited,
No.270F, N.EL Camino Real #173 Encinitas,
CA 92024, United States.

...Petitioner in both W.P's

Vs.

1. Insolvency and Bankruptcy Board of India,
Represented by its Chairman,
7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circus, New Delhi - 110 001.
2. Nagarajan
Reg.No.IBBI/ IPA-002/IP-N00055/2017-18/10107,
Insolvency Resolution Professional for
Malabar Hotels Private Limited,
Having office at No.29, Kavarai Street,
West Mamabalam,, Chennai – 600 033. ...Respondents in both
W.P's

Prayer in W.P.No.34141 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records leading to the Impugned Order bearing No.IBBI/CIRP-II/COMP/00029/2017-18/2770 dated 06.11.2018 passed by the 1st respondent herein and quash the same and consequently direct the 1st respondent to investigate pursuant to the review filed by the petitioner on 16.11.2018 and



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the complaint No.C-00133, lodged on 09.07.2018 in a time bound manner.

Prayer in W.P.No.4313 of 2019: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records leading to the Impugned Order bearing No.IBBI/CIRP-II/COMP/000029/2017-18/3658 dated 03.01.2019 passed by the 1st respondent herein and quash the same and consequently direct the 1st respondent to investigate pursuant to the review filed by the petitioner on 16.11.2018 and the Complaint No.C-00133 lodged on 09.07.2018 in a time bound manner.

In both W.P's:

For Petitioner : Mr.Anirudh Krishnan

For Respondents : Mr.C.V.Ramachandra Moorthy, CGSC, for R1
: Mr.T.K.Bhaskar, for R2

ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. The case of the petitioner is that, invoking the provisions of the Insolvency and Bankruptcy Code, (for short 'IBC'), the 2nd respondent has been appointed as the Resolution Professional to manage the affairs of the company for the rehabilitation and restructuring of the company. However, when the petitioner sought certain details from the 2nd respondent with



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regard to the affairs of the company, including the utilization of finances, the 2nd respondent had not provided the petitioner with the relevant details. It is the further case of the petitioner that, though the IBC provides for the code of conduct of the Resolution Professional, the 2nd respondent, without following the same, is acting in detriment to the interest of the company. Against the same, the petitioner preferred complaint under Regulation 3 of the IBC, but the same was negated by the 1st respondent by passing the impugned orders, which is wholly arbitrary and illegal as it is bereft of any proper reasons. Assailing the same, the present petitions are filed.

3. When the matters are taken up for hearing, learned counsel for the petitioner reported no instructions.

4. Learned Central Government Standing Counsel appearing for the 1st respondent submitted that, the petitioner made allegation as against the resolution professional / 2nd respondent and the same was elaborately considered by the 1st respondent and thereafter passed the present orders under challenge rejecting the petitioner's complaint. He further submitted that, the rejection of the petitioner's complaint does not leave the petitioner



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remediless as the petitioner could very well move before the National Company Law Tribunal, if he is so aggrieved, but the petitioner cannot be allowed to come before this Court under Article 226 of the Constitution. When an alternative remedy before NCLT is available, without exhausting the said remedy, filing these Writ petitions are not sustainable.

5. Admittedly, the petitioner is the erstwhile Managing Director of the Corporate Debtor, Malabar Hotels Private Limited (in short 'Company') and the petitioner company went into liquidation and the NCLT appointed the 2nd respondent as the Resolution professional to deal with the affairs of the company, against whom the petitioner made a complaint raising certain allegations before the 1st respondent, however, the 1st respondent rejected the allegations raised by the petitioner, vide order dated 06.11.2018, on the ground that there is no *prima facie* case made out and the subsequent review filed by the petitioner was also dismissed, vide order dated 03.01.2019.

6. Be that as it may. Though the petitioner has made very many allegations against the resolution professional, who has been appointed by the NCLT, however, no materials have been placed before this Court to



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substantiate the aforesaid allegations. Mere allegations in the absence of any materials would not suffice for this Court to grant the prayer as sought for by the petitioner.

7. For the reasons aforesaid, these Writ Petitions stand dismissed. No costs.

11.04.2023

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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

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M.DHANDAPANI., J.

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