



W.P.No.35023 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.35023 of 2019

M/s.FUSO GLASS INDIA PVT. LTD.,
FUSCO HOUSE,
No.91, Poonamallee High Road,
4th Floor, Chennai – 600 084.

... Petitioner

Vs.

1.The Registrar,
The National Company Law Tribunal,
Chennai Bench,
Corporate Bhavan, 3rd Floor,
No.29, Rajaji Salai,
Chennai – 600 001.

2.M/s. Noble Consolidated Glazings Ltd.,
Having its registered office at
No.5, 2nd Link Street,
CIT Colony, Mylapore,
Chennai – 600 004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings in C.P.No.667 of 2018 on the file of the 1st respondent and quash the same as illegal, arbitrary and unlawful and



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consequentially directing the 1st Respondent, the Hon'ble Tribunal to restore the C.P.No.667 of 2018 to its original file for proceeding with further in the claim under the provisions of the Bankruptcy and Insolvency Code, 2016.

For Petitioner : Mr.T.V.Lakshmanan
for M/s.K.Narasimhan

For Respondents : Mr.A.R.Sakthivel
SPC CGSC [R1]
M/s.S.Karthikei Balan [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings in C.P.No.667 of 2018 on the file of the first respondent and quash the same as illegal, arbitrary and unlawful and consequentially, to direct the first Respondent, the Tribunal to restore the C.P.No.667 of 2018 to its original file for proceeding with further in the claim under the provisions of the Bankruptcy and Insolvency Code, 2016.

2. The case of the petitioner is that, it is a company carrying on business in the manufacture of varieties of glasses and supply the same to the required person on receipt of orders from them. In this connection,



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there was some business transactions between the petitioner-Company and the second respondent during the period from 06.05.2009 to 25.02.2014. As per accounts maintained by the petitioner, there was a due by the second respondent to the petitioner-Company to the tune of Rs.79,42,402/-, which was also been confirmed by the second respondent in his express statement vide letter dated 07.03.2014. Though the second respondent acknowledged the above said liability, however, they started raising deficiencies of glasses of the petitioner belatedly and denied the liability to discharge the acknowledged debt due to the petitioner. Hence, no payment was made on and from 25.06.2014. The petitioner repeatedly sent letters to the second respondent to clear the dues to the petitioner, however, the same was not complied by the second respondent, thereby, legal action was initiated by the petitioner by issuing a demand notice dated 23.03.2018 under the provisions of Bankruptcy and Insolvency Code, 2016. Pursuant to which, the second respondent sent a reply dated 02.04.2018 raising disputes in the nature of complaints in the goods supplied during 2011.



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2.1. Thereafter, the petitioner filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 in C.P.No.667 of 2018 before the first respondent to initiate insolvency resolution process against the second respondent. However, the said application was rejected by the first respondent on 13.12.2018 on the grounds that there is existence of a dispute and the application is barred by limitation. Challenging the same, the above writ petition is filed.

3. The learned counsel for the petitioner submits that the present impugned order is not passed in terms of the Insolvency and Bankruptcy Code, 2016 and outside the jurisdiction, the first respondent passed the impugned order as if the petitioner had not made any application to condone the delay along with the claim petition. Thereby, the impugned order dismissing the petitioner's claim on the ground of delay is not an appealable order. Unless the first respondent passed order on merits under the Insolvency and Bankruptcy Code, 2016, then only, the order is appealable order before the Appellate Tribunal. Hence, the order is not appealable order and accordingly, he prays for appropriate orders.



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4. However, the learned Standing Counsel appearing for the first respondent submits that the application filed by the petitioner is not only rejected on the ground of delay but also on merits of the case. Paragraph No.10 of the impugned order discussed the merits of the case, in which, it has been stated that the petitioner is not entitled for any claim under Section 9 of the Insolvency and Bankruptcy Code and apart from that, the application was rejected on the ground of delay. Hence, the Writ Petition is not maintainable in view of the bar provided under Section 231 of the Insolvency and Bankruptcy Code, 2016 and if at all the petitioner have any grievance, the petitioner has to prefer an appeal before the Appellate Tribunal under Section 61 of the Insolvency and Bankruptcy Code, 2016. Accordingly, he prays for dismissal of the above Writ Petition.

5. The learned counsel appearing for the second respondent adopted the arguments advanced by the learned Standing Counsel appearing for the first respondent.

6. Heard the learned counsel appearing on either side and perused



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the materials available on records.

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7. Admittedly, for non-clearance of the dues payable to the petitioner, the petitioner made application under Section 9 of the Insolvency and Bankruptcy Code before the first respondent and the said application was rejected on merits and also on the ground of delay.

8. Therefore, this Court is of the view that, expressing any opinion on the merits of the case would adversely affect the interest of the petitioner. This Court is also of the view that, since there is an effective appeal remedy under Section 61 of the Insolvency and Bankruptcy Code, 2016, available to the petitioner, however, without exhausting the appeal remedy, filing the present writ petition is not maintainable. Hence, the prayer sought for in the present writ petition cannot be granted.

9. Accordingly, the Writ Petition is dismissed granting liberty to the petitioner to file an appeal before the Appellate Tribunal in terms of Section 61 of the Insolvency and Bankruptcy Act, 2016, within a period of four (4) weeks from the date of receipt of a copy of this order and the



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period pending before this Court is excluded for the purpose of limitation, enabling the petitioner to file an appeal. No costs.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

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The National Company Law Tribunal,
Chennai Bench,
Corporate Bhavan, 3rd Floor,
No.29, Rajaji Salai,
Chennai-600 001.



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M.DHANDAPANI, J.

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