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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th May, 2023

\+ **W.P.(C) 5721/2023 and CM APPL. 22425/2023**

JBB EVEREST BUILDTECH PRIVATE LIMITED ..... Petitioner

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Kunal Godhwani, Advocate (M: 9582996403).

versus

NARESH CHAWLA ..... Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed challenging the impugned order dated 19th December, 2022 passed by the Delhi State Consumer Dispute Redressal Commission (DSCDRC) in ***Complaint Case No.1290/2016*** titled ***Naresh Chawla v. JBB Everest Buildtech Pvt. Ltd.*** Vide the impugned order, an amount of Rs.22,00,000/- has been directed to be refunded by the DSCDRC to the Respondent herein along with interest. Costs have also been imposed upon the Petitioner herein.

3. The submission of Mr. Mehta, ld. Sr. Counsel appearing for the Petitioner is that in terms of the judgment of the Supreme Court in ***Ghanshyam Mishra v. Edelweiss Asset Reconstruction Co. (2021) 9 SCC 657,*** the State Commission did not have any jurisdiction to pass order in respect of those claimants who are flat buyers, as the company has already undergone insolvency proceedings, wherein a resolution plan has been approved. The Respondent herein would also be bound by the resolution

plan which was approved by the NCLT.

4. On a specific query from the Court as to what would be the entitlement of the Respondent, in terms of the resolution plan approved by the NCLT, it appears to the Court that the stand of the Petitioner company is that the Respondent having not made any claim within the time prescribed in the resolution plan, he may not be entitled to any amount.

5. A perusal of the resolution plan would show that in terms of the plan, the Respondent is entitled to certain monetary compensation along with possession of the flat. However, from the instructions which are being given today to the ld. Sr. Counsel, it appears that the Company may not be willing to do so.

6. Moreover, the orders of the State Commission can be challenged before the National Commission under section 51 of the Consumer Protection Act, 2019. Recently the Supreme Court in ***South Indian Bank v. Naveen Mittal Philip [SLP (Civil) Nos. 22021-22022 of 2022, date of decision 17th April, 2023]*** has deprecated the practice of High Court invoking power under Article 226 in matters where efficacious and effective alternative forum is available. The relevant portion of the said judgment reads as under:

> *"13. In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed.* ***We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.*** *We are also constrained to take judicial notice of the fact that certain High Courts*

continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.

14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104.

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16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. ***When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative.*** *We wish to quote with profit a recent decision of this Court in* ***Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771****.*

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18. ***While doing so, we are conscious of the fact that the powers conferred under Article 226 of the***

> ***<u>Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal</u>.”***

7. In the above background, this Court is of the opinion that if the Respondent is to be treated at par with other flat buyers, he would have to be given the benefit of the resolution plan and the Respondent cannot be left without any remedy. It also appears from the submissions made that cases of similar buyers may have been dealt with by the NCDRC. The present petition is, accordingly, being dismissed on the ground of availability of an efficacious alternate remedy for the Petitioner, before the NCDRC.

8. If the Petitioner wishes to seek any exemption from deposit, it may approach NCDRC which would consider the same in accordance with law. Any observation in this order would not affect the final adjudication of the Petitioner's appeal before the NCDRC which would also consider the relief to be granted, keeping in mind the Resolution plan as also the interest of the Respondent.

9. The petition is dismissed in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 8, 2023
mr/sk