



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20th October, 2023
Pronounced on: 07th November, 2023

+ **LPA 717/2023**

RAINBOW DIGITAL SERVICES PVT LTD THROUGH
 DIRECTOR & ANR. Appellants
 Through: Mr. Manoj Kumar Garg, Advocate

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF
 COMMUNICATIONS & ORS. Respondents
 Through: Mr. Rahul Sharma, CGSC with Mr.
 Vinod Tiwari, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J:

CM APPL. 55070/2023 (delay in filing the appeal)

1. For the grounds and reasons stated therein, the application is allowed and the delay in filing the appeal is condoned.

2. Disposed of.

LPA 717/2023, CM APPL. 55071/2023, CM APPL. 55072/2023

3. The present appeal is directed against judgment dated 07th August, 2023 (“**Impugned Judgment**”) passed by the learned Single Judge of this Court dismissing the underlying writ petition being W.P.(C) 10042/2023.

4. Briefly put, Appellant No. 1-Company, acting through Appellant No. 2, its Director/ Authorized Signatory, is the second assignee of certain assets



of a company undergoing liquidation, i.e., Growthways Trading Private Limited (“GTPL”), before the National Company Law Tribunal (“NCLT”). Said assets, includes outstanding dues owed by the Department of Post to GTPL. The aforesaid writ petition came to be filed by the Appellant seeking, remittance of the outstanding dues as also directions against Department of Posts for violation of Section 37 of the Indian Post Office Act, 1898 (“Act”) – pertaining to undelivered postal articles. By way of the Impugned Judgment, the learned Single Judge declined to entertain the writ petition, observing that the issue raised in the writ petition was pending consideration before the NCLT.

Background

5. The background of the grievance as laid out in the present appeal is as under:

5.1. On 17th December, 2019, GTPL was admitted into insolvency and an Interim Resolution Professional (“IRP”) was appointed by the NCLT. Upon examination of GTPL’s records, the IRP found that were orders/ consignments sent through Department of Posts which had been neither delivered to customers nor returned to origin, and there were also orders which had been delivered and for which COD amount stood collected. In respect of these orders/ consignments, a sum of Rs. 57,80,065/- was found to be pending from the Department of Post.

5.2. In July, 2020, the IRP wrote to the Chief General Manager of Respondent No. 3 [Department of Post, Postal Directorate, Dak Bhavan, New Delhi] seeking remittance of the outstanding amount. On lack of a response thereto, the IRP sent communications to Respondent No. 4 [Senior Superintendent of Post Offices, Department of Post, Chanakyapuri, New



Delhi – *hereinafter referred to as “SSPO”*] in November, 2020, regarding the pending remittance. Initially, the SSPO responded seeking time to respond, but thereafter, re-directed the grievance to the Air Mail Sorting Division, New Delhi of Respondents No. 3 and 4. Thereafter, in December, 2020, the IRP reached out to the SSRM, Air Mail Sorting Division of Respondent No. 4, in relation to the dues. In response, the IRP was informed that all eligible postal articles stood paid and compensated, as the case may be, to GTPL. Pursuant thereto, a legal notice dated 27th March, 2021 was sent on behalf of the IRP, to Respondent No. 4, demanding payment of the aforementioned dues, however, it bore no fruit, and Respondent No. 4 simply re-iterated their earlier response.

5.3. The IRP filed an application (I.A. No. 4848/2021 in C.P. NO. (IB). 1443/ND/2019) before the NCLT under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“**IBC**”) against Respondent No. 4 seeking directions for recovery of the outstanding amount. Meanwhile, GTPL went into liquidation in terms of order dated 02nd November, 2021 and the IRP was appointed as the Liquidator. Subsequently, the NCLT issued notice to Respondent No. 4 in I.A. No. 4848/2021, by way of order dated 20th December, 2021. Copy thereof was communicated to Respondent No. 4 by IRP’s counsel, *vide* letter dated 27th December, 2021.

5.4. On 28th June, 2022, in a meeting convened between the Stakeholders Consultation Committee of GTPL, it was resolved to assign, through auction, all identified Not Readily Realizable Assets (“**NRRAs**”) of GTPL, which included the outstanding dues from the Department of Posts – as per Regulation 37A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Mr. Jatin Nagpal emerged as the



highest bidder and a deed of assignment in respect of GTPL's NRRAs was executed by the Liquidator, in his favour, on 05th August, 2022.

5.5. Subsequently, on an application filed by the Liquidator, Mr. Jatin Nagpal was substituted as the Applicant in I.A. No. 4848/2021 in light of the assignment. Upon being unable to realise the NRRAs himself, Mr. Nagpal assigned the same to the Appellants *vide* Deed of Assignment dated 07th February, 2023.

5.6. Appellant submits that despite a multitude of representations seeking remittance of the outstanding dues and acknowledgment of the said amounts in various correspondence, Respondent No. 4 showed reluctance to address the issue of payment of outstanding dues, and in fact, complaints/ grievances were needlessly and deliberately directed to different departments.

6. In the aforementioned circumstances, the Appellant preferred the underlying writ petition, which was disposed of through the Impugned Judgment wherein the Court had held as under:

"3. Learned Counsel for. the Petitioner contends that Section 37 of the Indian Post Office Act, 1898 stipulates that every undelivered postal article after detained in the post office for a period prescribed under Section 37, shall be either forwarded free of further charge to the post office at which it was posted or returned to. the sender or returned to the office of the Postmaster General.

4. It is stated that several articles sent by Growthways Trading Private Limited were neither delivered to the customers nor returned to the origin RTO and, therefore, the consignment was realizable and we classified as NRRAs which now stands assigned to the Petitioner herein. Learned Counsel states that the Petitioner has no other remedy other than approaching this Court by invoking jurisdiction under Article 226 of the Constitution of India for recovery of the amount.

5. As stated above, Mr. Jatin Nagpal, from whom the Petitioner had taken the assignment, has already filed an application under Section 60(5) of Code and as the IRP has already moved an application under Section 60(5) of the IBC Code seeking direction for the recovery of the amount by the Corporate Debtor along with supporting affidavit, notices have been issued on the said application and the same is pending disposal before the



NCLT.

6. Heard learned Counsel for the parties and perused the material on record.

7. At this juncture, it is necessary to extract Section 60(5) of the Insolvency & Bankruptcy Code, 2016 and Regulation 37A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the same reads as under:-

“60. (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

- (a) any application or proceeding by or against the corporate debtor or corporate person;
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

“37A. Assignment of not readily realisable assets.

37A. (1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders’ consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation - For the purposes of this sub-regulation, “not readily realisable asset” means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the code.”

8. A perusal of the above Sections and Regulation shows that the IRP has already approached the NCLT for the purpose of realisation of the NRRRA. Under Regulation 37A of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the NRRRA was put on auction which was purchased by M. Jatin Nagpal, who has impleaded himself as the successor in interest of the IRP.

9. The Petitioner has now stepped into the shoes of Mr. Jatin Nagpal. Since the issue is pending before the NCLT, it was not open for the



Petitioner to approach this Court under Article 226 of the Constitution of India for recovery of the amount.

10. *The Petitioner has no other option but to move an application before the NCLT substituting Mr. Jatin Nagpal and pursue his remedy there. This Court, therefore, is not inclined to interfere in the present case exercising its jurisdiction under Article 226 of the Constitution of India when parallel proceedings for the very same relief are being pursued the NCLT.*

11. *The writ petition is dismissed along with pending application(S), if any.”*

Appellant's Contentions

7. By way of the present appeal, Mr. Manoj Kumar Garg, counsel for Appellants, assails the Impugned Judgment on following grounds:

7.1. It has been erroneously held that it was not open for the Petitioner to approach this Court under Article 226 of the Constitution of India for recovery of the amount in-question.

7.2. The Impugned Judgment fails to appreciate that Respondent Nos. 2 to 4 violated Section 37(3) of the Act in dereliction of their duties, by not delivering the orders/consignments to the customers nor returning back said orders/consignments to the origin, in terms of the said provision.

7.3. The Impugned Judgment has incorrectly relied upon the fact that similar relief has been prayed before the NCLT by the Ex-Resolution Professional/ Current Liquidator appointed for GTPL.

7.4. The Impugned Judgment did not take into account that the Respondent Nos. 2 to 4 have committed dereliction of duty by not remitting the amount in-question.

Analysis

8. We have considered the aforementioned contentions and perused the documents on record. The learned Single Judge dismissed the petition



holding that it was not open for the Petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of the India for recovery of outstanding dues, as the proceedings in respect of the same are already pending consideration before the NCLT.

9. It has not been disputed before us that the issue of remittance of outstanding dues from the Department of Post is currently pending before the NCLT. Further, notice already stands issued to Department of Posts in respect of the application moved *qua* the dues. As such, we fail to understand the reasons holding back the Appellant from campaigning its cause before the NCLT. In our considered opinion, no fault can be found in the view taken by the learned Single Judge. We find no reason for this Court to exercise its extraordinary writ jurisdiction at this stage to parallelly consider the question of realisation of the NRRA in-question. That apart, the issue of remittance of outstanding dues by the Department of Posts is interconnected to the allegations of violation of Section 37(3) of the Act. Given the former is yet to be decided by NCLT, we are not inclined to delve into the allegations of violation of the Act.

10. In view of the above, there is no merit in the present appeal and accordingly the same is dismissed along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

NOVEMBER 07, 2023/nk