IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9986 OF 2024

Sun Infrastructure Pvt. Ltd., Sharanpur Road, Nashik – 422005.	]]	.. Petitioner
Versus		
1. The National Company Law Tribunal, Cuffe Parade, Mumbai – 400005. 2. Canara Bank, Ballard Estate, Mumbai – 400 001.	]]]]	.. Respondents

Mr. Vivek Salunkhe with Mr. Akshay Petkar, Mr. Vivek Punjabi and Mr. Priyansh Jain, Advocates for the Petitioner.

Mr. Prakash Shinde with Mr. Harsh Sheth, Advocates, i/by MDP and Partners, for Respondent No.2.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

DATE : 23RD JULY, 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. Rule. Rule made returnable forthwith and heard learned counsel for the petitioner as well as learned counsel for the respondent no.2. Service on respondent no.1 is dispensed with.

2. The petitioner had obtained finance from the 2nd respondent – Canara Bank on 5th March 2015. The petitioner's account has been declared as Non Performing Asset on 1st July 2018. Pursuant to a Demand Notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 *("Act of 2002")* on 1st August 2022, the Bank took steps to recall the credit facility. The Bank thereafter filed Original Application No.174 of 2023 before the Debts Recovery Tribunal, Mumbai *("DRT")*. The Bank also filed Company Petition No.132 of 2024 before the National Company Law Tribunal *("NCLT")* under Section 7 of the Insolvency and Bankruptcy Code, 2016 *("Code")*. In the meanwhile, the DRT decided Original Application No.174 of 2023 on 11th June 2024. By that order, the petitioner was directed to pay an amount of Rs.21,99,42,524.10 with interest @ 15.15% p.a. with quarterly rests as well as 2% penal interest from 2nd December 2022 till its realization. The petitioner being aggrieved, preferred an appeal before the Debts Recovery Appellate Tribunal *("DRAT")*. In the meanwhile, the NCLT closed the proceedings in Company Petition No.132 of 2024 that were filed under Section 7 of the Code on 21st June 2024. In the appeal preferred by the petitioner before the DRAT, being Appeal on Diary No.1290 of 2024, an order was passed on 25th June 2024 directing the petitioner to deposit a sum of Rs.6 crores as pre-deposit in two equal installments. Against the order dated 21st June 2024 passed by the NCLT in Company Petition No.132 of 2024, the petitioner approached the National Company Law Appellate Tribunal *("NCLAT")*. By order dated 5th July 2024, the NCLAT observed that since the NCLT had reserved the proceedings filed by the Bank under Section 7 of the Code for passing orders, it was not inclined to entertain the appeal. The petitioner was permitted to file an application to bring on record subsequent events/materials before the NCLT. Pursuant to aforesaid, the petitioner filed Interlocutory Application No.3623 of 2024 before the NCLT praying that the pronouncement of final order in Company Petition No.132 of 2024 be deferred by considering the subsequent events. In paragraph 38 of the writ petition, the petitioner has averred as under :-

> *"38. The petitioner then filed an Interlocutory Application No.3623 of 2024 in the CP before the Hon'ble NCLT and brought on record all the subsequent events that have transpired and accordingly sought for deferment of passing of the final order in the CP, thereby admitting the petitioner i.e. a going concern into solvency. However, the Hon'ble NCLT paid no heed towards the same and reserved the Interlocutory Application No.3623 of 2024 for orders along with CP."*

3. It is in this backdrop that the petitioner has approached this Court praying that the NCLT be directed not to pass final orders in Company Petition No.132 of 2024 till the DRAT decides the appeal preferred by the petitioner. It is also prayed that the effect and operation of the order dated 21st June 2024 passed by the NCLT in Company Petition No.132 of 2024 be stayed until the DRAT decides the appeal.

4. Mr. Vivek Salunkhe, the learned counsel for the petitioner submits that since the NCLAT permitted the petitioner to bring to the notice of the NCLT subsequent events/materials in the form of the order of the DRT being stayed by the DRAT, it was expected that Interlocutory Application No.3623 of 2024 preferred by the petitioner would be first considered before passing a final order in the Company Petition. Instead, both the proceedings are now reserved for orders, thereby depriving the petitioner of the right to urge before the NCLT the effect of the subsequent events. The learned counsel for the petitioner further submits that in case a drastic order under Section 7 of the Code admitting the Company Petition is passed, the petitioner would lose its credibility resulting into grave prejudice. On instructions, it is submitted that the order passed by the DRAT of pre-depositing an amount of Rs.6 crores has been complied with on the given dates as a result of which the order of the DRT is stayed. On instructions, it is further submitted that an amount of Rs.4,63,54,861/- would be deposited with the DRT within a period of four weeks from today so as to complete the outstanding dues payable that have been referred to in paragraph 3 of the order passed by the DRAT. It is therefore prayed that the reliefs sought in the writ petition be granted.

5. Mr. Prakash Shinde, the learned counsel for the 2nd respondent – Bank has opposed the maintainability of the writ petition by urging that

the same is premature. It is further submitted that since the petitioner has now approached the NCLT pursuant to the order passed by the NCLAT, this Court may not interfere in the writ petition. It is for the NCLT to consider the prayers made in the petitioner's Interlocutory Application. In these facts, no relief deserves to be granted to the petitioner.

6. Having heard the learned counsel for the parties, we find that the petitioner had challenged the order dated 21st June 2024 passed by the NCLT reserving the proceedings in Company Petition No.132 of 2024 for passing final orders before the NCLAT. The NCLAT by the order dated 5th July 2024 has observed that the petitioner could file an application bringing the subsequent materials to the notice of the NCLT. Paragraph 3 of the said order reads as under :-

> *"3. Adjudicating Authority having reserved the application for orders, we see no reason to entertain this Appeal at this stage. If so advised, Appellant may file an application bringing subsequent materials on record before the Adjudicating Authority and it is for the Adjudicating Authority to take appropriate action on the said application."*

7. In the aforesaid factual background, the petitioner having filed the aforesaid interlocutory application, the interest of justice demands that

this application be considered prior to passing any order on the Company Petition preferred by the Bank. This is for the reason that in the interlocutory application, the petitioner has prayed that various subsequent events be taken note of and pronouncement of the order in the Company Petition be deferred. If the interlocutory application as well as the Company Petition are decided together, the apprehension of the petitioner of prejudice being caused to it cannot be brushed aside as unfounded. We note that the order passed by the DRT has been presently stayed by the DRAT. A further statement made by the petitioner to show its bonafides is also accepted as statement made to the Court. The interlocutory application now filed before the NCLT seeks consideration of these aspects before adjudicating the Company Petition. In our view, this request made by the petitioner ought to be considered by the NCLT before deciding the Company Petition.

8. In these facts, the interest of justice demands that the interlocutory application preferred by the petitioner being Interim Application No.3623 of 2024 be first decided before proceeding to pronounce final order on the Company Petition. The statement made on behalf of the petitioner that an amount of Rs.4,63,54,861/- would be deposited with the DRAT within a period of four weeks from today is accepted. The petitioner shall comply with the said statement. In case any adverse order is passed on the

Interlocutory Application, the same shall not be acted upon for a period of two weeks from the date of the order.

9. By clarifying that this Court has not examined the merits of the prayers made in the Interlocutory Application and by stating that all contentions can be raised before the NCLT, the writ petition is disposed of with aforesaid directions. Rule accordingly.

10. Parties to act on authenticated copy of this order.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**