IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2023

PRONOUNCED ON : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.14475 of 2020
and
WMP.No.17961 of 2020

M/s. Bafna Pharmaceuticals Limited
A company incorporated under the Companies Act,
Rep.by its Chief Financial Officer
M.Sridhar

... Petitioner

vs.

The State of Tamil Nadu,
Represented by its Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Office Complex,
Survey No.1275/3, 3rd Floor,
Elephant Gate Bridge,
Next to Elephant Gate Police Station,
Vepery, Chennai 600 003.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the file of the respondent vide notice No.null dated 14.01.2020 and consequent notices RC37/2020/A3 dated 18.08.2020, RC.37/2020/A3 dated 05.09.2020 and quash the same.

For Petitioner : Mr.T.Ravichandran
for M/s.Shree Law Service

For Respondents : Haja Nazirudeen
Addl. Advocate General
for Mr.M.Venkateswaran
Spl.Govt.Pleader (Taxes)
Assisted by Mr.V.Prashanth Kiran
Government Advocate.

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Advocate General for the respondent at length. By this order, this writ petition is being disposed.

2. The petitioner herein has challenged the impugned notice dated 14.01.2020 in TIN.No.3328124118/2013-14 to 2015-16 and the consequential notice dated 18.08.2020 bearing Ref.No.37/2020/A3 and notice dated 05.09.2020 bearing Ref.No.37/2020/A3.

3. By the impugned notices dated 14.01.2020, 18.08.2020, and 05.09.2020, the petitioner has been called upon to pay tax arrears of Rs.25,26,240/- towards arrears of tax for Assessment Year 2013-2014 and 2015-2016 both under VAT and CST respectively as detailed below : -

Assessment Year	***VAT***	***CST***	***Total***
2013-14	5,75,414.00	6,83,528.00	12,58,942.00
2014-15	4,68,978.00	7,71,372.00	12,40,350.00
2015-16	-	26,948.00	26,948.00
		Total	25,26,240.00

4. A dispute arose under the Central Sales Tax Act, 1956, on account of failure on the part of the petitioner to submit necessary Form-C and Form-F.

Therefore, an Assessment Order came to passed on 24.12.2018 for the Assessment Year 2014-2015. There is a mention to the same in Paragraph 17 of the Counter Affidavit filed by the respondent.

5. Copy of the aforesaid Assessment Order seeking to revise the deemed assessment completed in terms of Section 22 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006, has not been filed along with the typed set of papers either by the petitioner or by the respondent.

6. It is the case of the petitioner that Assessments were deemed to have been completed earlier under Section 22 of Tamil Nadu Value Added Tax (TNVAT) Act, 2006 on 31.10.2015. They were however reversed later. It appears that an assessment order came to be passed on 24.12.2018 for the Assessment Year 2014-2015.

7. The petitioner herein was in arrears of tax both under the Central Sales Tax Act, 1956, & Tamil Nadu Value Added Tax (TNVAT) Act, 2006. It appears that the petitioner had committed default. Therefore, one of the

petitioner's Operational Creditor namely M/s.Aries Limited approached the National Company Law Tribunal under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. One Radhakrishnan Dharmarajan, who was appointed as a Resolution Professional by the National Company Law Tribunal (NCLT), Chennai in CP/682(IB)/CB/2017 in CP/682(IB)/CB/2017.

8. The National Company Law Tribunal (NCLT), Chennai passed an order on 16.07.2018 in CP/682(IB)/CB/2017. Thus, there was a Moratorium in-force with effect from 16.07.2018 under Section 14 of Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

9. The National Company Law Tribunal (NCLT), Chennai appointed one Mr. Gopalasamy Ganesh as an Interim Resolution Professional (IRP) in its order dated 16.07.2018 in CP/682(IB)/CB/2017.

10. Pursuant to the aforesaid orders, the Resolution Professional appointed, who was also asked to supervise the implementation of the plan addressed a Letter dated 30.12.2019 to the respondent Commercial Department, wherein, the Resolution Professional has stated as follows : -

> "Accordingly, pursuant to the Approved Resolution Plan, the Resolution Applicant is proposing to pay NIL value against (Rs.0.53 Crores due as Sales Tax (Central Sales Tax Act, 1956 & Sales Tax/Vat Act) and all the contingent liabilities and legal cases pending against the Company.
>
> Further any liability crystallizing out of the contingent liabilities or disputed legal cases of the Company or any other unknown or unclaimed liability pertaining to a transaction or incident dating to a period prior to the Insolvency Commencement date or during the corporate insolvency resolution process which does not find a place in the approved Resolution Plan, shall be deemed to have lapsed on the approval of the plan; and the Company shall be deemed to have been duly discharged from all legal liability arising from such antecedent claims.
>
> Please find enclosed NCLT order dated 01st February 2019 and relevant page (page No.17) of resolution plan (under the heading resolution for disputed legal case and contingent liabilities) for your reference."

11. One of the promoters of the petitioner Company namely Mr.Mahavir Chand Bafna himself initiated Corporate Insolvency Resolution Process (CIRP) in CP/682(IB)/CB/2017 on 20.12.2018 as a resolution applicant under the provisions of Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT) Chennai.

12. The National Company Law Tribunal (NCLT) by its order dated 01.02.2019, sanctioned Corporate Insolvency Resolution plan (CIRP) submitted by the resolution applicant, the promoter of the petitioner namely Mr.Mahavir Chand Bafna.

13. In the sanctioned resolution plan of the NCLT vide its order dated 01.02.2019, the Tax Liability of the petitioner was crystalized under various enactments was as follows : -

Sl.No.	Duties & Taxes	As on 30 June 2018 (Rs in Crs)	Proposed to pay%	Amt proposed to pay (Rs in Crs)
1	TDS Payable	0.21	0.05	0.01
2	Income Tax	1.99	0.05	0.1
3	Service Tax	0.27	0.05	0.01
4	Professional Tax	0.17	0.05	0.01
	Total	2.64		0.13

14. As far as the contingent liabilities is concerned, the resolution applicant, the promoter of the petitioner namely Mr.Mahavir Chand Bafna stated that the Central Sales Tax liability due to non-submission of Forms and the Input Tax Credit is 0.53 Crores (Rs.53,00,000/-) between March 2014 and June 2018 and same will not be paid. Further, in the Resolution Plan, it was stated that the case shall get disposed on account of the settlement of claims under the Resolution Plan.

15. Relevant portion of the Resolution Plan, sanctioned by the NCLT on 01.02.2019 reads as under : -

- The Disputed Legal Case against the Company as on 30th June 2018 are given in Annexure E which amounts to Rs.11.81 Crs.

- For the Purpose of the Resolution Plan, the liability arising out of the said case, if any, is being considered as deemed crystallised as on the Resolution Plan Approval Date. Hence, the RA is not disputing the above liabilities any further and instead considering them as deemed crystallised and admitted. Simultaneously, the Resolution Applicant is proposing to **pay NIL value** against all the **"contingent liabilities"** and legal cases pending against the Company.

- Further any liability crystalizing out of the contingent liabilities or disputed legal cases of the Corporate Debtor or any other unknown or unclaimed liability pertaining to a transaction or incident dating to a period prior to the Insolvency Commencement Date or during the CIRP which does not find a place in the approved Resolution Plan, shall be deemed to have lapsed on the approval of the plan; and the Corporate Debtor shall be deemed to have been duly discharged from all legal liability arising from such antecedent claims."

16. The decision of the NLCT was appealed before the National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) (Insolvency) No.203 of 2019 by one of operating Creditor namely M/s.Saravana Global Holdings Limited and another. The appeal was however dismissed by the NCLAT, New Delhi vide its order dated 04.07.2019.

17. A further appeal before the Hon'ble Supreme Court by the said Corporate Creditor namely M/s.Saravana Global Holdings Limited in Civil Appeal No.5344 of 2019 was also dismissed by the Hon'ble Supreme Court vide its order dated 15.07.2019.

18. The learned counsel for the petitioner would therefore submit that the impugned demand notices seeking to recover **Rs.25,26,240/-** from the petitioner as against the amount that was quantified by the petitioner in the resolution plan for a sum of **Rs.53,00,000/-** is unsustainable.

19. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Courts in the following cases:-

(i) **Ghanashyam Mishra and Sons Private Limited, Through the Authroised Signatory** Vs. **Edelweiss Asset Reconstruction Company Limited, Through the Director and others**, (2021) 9 SCC 657.

(ii) **Ruchi Soya Industries Limited and others** Vs. **Union of India and others**, (2022) 6 SCC 343.

(iii) **Aircel Cellular Limited** Vs. **Union of India and others** in W.P.No.21174 of 2023 dated 10.01.2023.

20. On the other hand, the learned Additional Advocate General for the

respondent would submit that the impugned order is unsustainable.

21. Specifically, the learned Additional Government Pleader submits that the respondent was unaware of the proceedings before the NCLT. Hence, the Resolution Plan that was sanctioned by the NCLT on 01.02.2019, which appears to have been affirmed by the Hon'ble Supreme Court is not binding on the Commercial Tax Department as the Commercial Tax Department had no notice on the same.

22. It is further submitted that this Court in **Aircel Cellular Limited** case while dealing with the case under the Income Tax Act, has considered the decision of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited** case (referred to supra) and has held as under : -

> 35.*Therefore, Corporate Insolvency Resolution Plan sanctioned and approved cannot impinge on the rights of the Income Tax Department to pass any fresh Assessment Order under Section 148 read with Sections 143(3) and 147 of the Income Tax Act, 1961.*
>
> *36.Therefore, the proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) cannot be pressed into service to dilute the rights of the Income Tax Department under the*

Income Tax Act, 1961 to re-open the assessment under Section 148 of the Income Tax Act, 1961.

37.In my view, the Income Tax Department was not precluded from reopening the assessment completed under Section 143(3) of the Income Tax Act, 1961.

38.Therefore, these Writ Petitions filed by these petitioners have to be dismissed. The Assessment Orders which have been passed pursuant to the interim order dated 27.12.2018 are directed to be given to the respective petitioners by the respondent, within a period of thirty days from the date of receipt of a copy of this order."

23. The learned Additional Advocate General for the respondent also submits that there are several disputed questions of fact and therefore, on this count also, this Writ Petition is liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in **Embassy Property Developments Private Limited** Vs. **State of Karnataka and others**, 2019 SCC Online SC 1542.

24. Finally, the learned Additional Advocate General has relied on the decision of the Hon'ble Supreme Court in **State Tax Officer** Vs. **Rainbow**

Papers Limited, 2022 SCC Online SC 1162. Specifically, a reference is made to Paragraphs 52, 53, 56 and 57, which reads as under :-

> *"52. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan.*
>
> *53. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC.*
>
> *54. .....*
>
> *55. .....*
>
> *56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.*
>
> *57.As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of*

secured creditor in the IBC does not exclude any Government or Governmental Authority."

25. It is further submitted that Section 27 of the TNVAT Act, 2006, is *pari materia* with Section 48 of the Gujarat Value Added Tax (Amendment) Act, 2007. Hence, this Writ Petition is liable to be dismissed.

26. The learned Additional Advocate General further submitted that the petitioner should be directed to pay the amount that has been demanded in the impugned demand notices as the Commercial Tax Department was not informed about the Corporate Insolvency Resolution Plan which has been filed by the Resolution Applicant namely Mahavir Chand Bafna.

27. In the Counter that has been filed by the respondent, it has been stated that for the assessment year 2013-14, 2014-15 and 2015-16, orders passed under CST Act and subsequent filing of statutory declaration forms, the assessments were revised. The arrear related to the assessment years 2013-14.

2014-15 and 2015-16 under the CST Act based on assessment passed for non submission of C forms. The arrears relating to the years 2013-14 and 2014-15 under VAT Act arrived due to non-reversal of ITC on non-filing of C form for the years 2013-14 and 2014-15. The petitioner was in arrears of Rs.2,13,98,958/- under CST Act alone as on 31.01.2019.

28. It is further stated that subsequently based on the forms submitted this respondent had revised the assessment under CST Act for the Year 2014-2015 on 22.11.2019 and the demand raised was only Rs.7,71,372/- with ITC reversal under VAT Act of Rs.4,68,978/- . The assessment for the years 2013-14 and 2014-15 were revised under the CST Act on 22.11.2019 and 6.12.2019 respectively.

29. It is further stated that the demand raised for 2013-14 was Rs.6,83,528/- with ITC reversal under VAT Act Rs.5,75,414/- and the demand raised for 2015-16 was Rs.26,948/- under the CST Act. It is further stated that the demands were pending for a long time, hence the Respondent by notice dated 14.1.2020 requested the petitioner to pay the entire demand otherwise all

legal steps would be taken to collect the arrears due to the Government. Aggrieved by this notice of demand the petitioner filed the present writ petition.

30. Thus, a demand was raised for the Assessment Year 2014-15 under CST for a sum of Rs.2,13,98,958/- raised on 24.12.2018. A notice was also issued for collection of arrears on expiry of notice time on 30.01.2019. The petitioner however did not respond to the notice and subsequently the bank account of the petitioner was attached on 04.02.2019. It is submitted that only thereafter the petitioner filed a reply stating that petitioner had approached NCLT and has secured an order on 01.02.2019, whereas the last date for filing a claim statement before NCLT has already expired on 31.07.2018. Therefore, it is submitted that the aforesaid claim statement is declared as null and void in accordance with the provisions of IBC Code.

31. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Advocate General for the respondent.

32. Insolvency and Bankruptcy proceeding initiated against the petitioner herein under Insolvency Bankruptcy Code, 2016 by one of the Operational Creditors namely M/s.Aries Limited, had apparently supplied goods for a sum of **Rs.13,01,093/-** to the petitioner. As against the aforesaid amount, the petitioner appears to have already paid a sum of Rs.**3,00,000/-.** Practically, the insolvency proceeding inititated against the petitioner appears to be staged managed and more in the nature of voluntary Corporate Insolvency Resolution Process.

33. In the Insolvency Proceedings initiated by the so-called operating creditor M/s.Aries Limited to recover the aforesaid amount of Rs.13,01,093/- from the petitioner was crystalized as **Rs.11,35,353/-.**

34. The NCLT vide its dated 16.07.2018 appointed, Mr.Gopalaswamy Ganesh Babu, as an Interim Resolution Professional (IPR). In view of the above order. Thus, a moratorium under Section 14 of the Insolvency Bankruptcy

Code, 2016 was in force with effect from the same date i.e. 16.07.2018. Moratorium order dated 16.07.2018 of NCLT prohibited the following :-

> "(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration Panel or other authority.
>
> (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
>
> c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);
>
> (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor".

35. The said Interim Resolution Professional was required to file a disclosure statement within two working days from the date of receipt of the said Order and make a public announcement as is contemplated under Section 15 of the Insolvency Bankruptcy Code, 2016 within three days from the date of receipt of the Order.

36. Immediately, after the said Interim Resolution Professional was appointed on **16.07.2018**, the Interim Resolution Professional has released a paper publication in the Financial Express in Form-A on **18.07.2018** and fixed **31.07.2018** as the last date for filing Claim Statements by the creditors. i.e. both Operational and Financial creditors. Thus, the proceedings were initiated to defeat the rights of scores of creditors of the petitioner.

37. Later on 01.11.2018, one Mr.Radhakrishnan Dharmarajan, was appointed as a Resolution Professional by the NCLT, after meeting of Committee of Creditors is said to have been held on 27.09.2018 and 30.11.2018.

38. One of the promoters of the petitioner Company namely Mr.Mahavir Chand Bafna himself filed Corporate Insolvency Resolution Plan (CIRP) as a resolution applicant under the provisions of Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT) Chennai in CP/682(IB)/CB/2017 on 20.12.2018.

39. The Resolution Plan that was submitted by the promoter of the petitioner Mr. Mahavir Chand Bafna on 26.08.2018 gives the particulars of the various creditors as follows : -

Stakesholder	***O/S.Amt/Claim.Amt(Rs.Crs.)***	***Payment Proposed (Rs.Crs.)***	***Rational***
Secured Financial Creditors	49.23	34.46	Attempt has been made to pay to the secured financial creditors an amount of Rs.34.46 Crs from the investment by RA & his investors based on cash flow visibility
ESI & PF	1.94	1.94	Full amount has been proposed to be paid considering the nature and importance of the employees, workmen for the revival of the organisation.
Operational Creditors (Workmen)	0.35	0.24	70% has been proposed to be paid considering the nature and importance of the workmen
Operational Creditors (Employees)	0.64	0.32	50% has been proposed to be paid considering the nature and importance of the employees
Other Operational Creditors	41.19	6.53	Operational Creditors being unsecured and unlikely to receive any recovery under liquidation scenario have also been proposed to be paid some amount given their importance and contribution towards business operations
Statutory Liabilities	2.64	0.13	Statutory liabilities where no set off option is there are also proposed to be paid 5% a small amount despite lower ranking amongst stakeholders and no recovery potential under liquidation scenario
Other Liabilities	0.21	0.01	Other Liabilities have been proposed to pay 5%, given the insufficient cash

Stakesholder	*O/S.Amt/Claim.Amt(Rs.Crs.)*	*Payment Proposed (Rs.Crs.)*	*Rational*
			visability for all stakeholders
Contingent and Disputed Liabilities	22.07	-	Contingent and disputed liabilities, dispute legal cases, have been assumed as deemed admitted and proposed to be paid NIL Value.
Equity Shareholders	23.66	2.36	Equity shareholders being the highest class of risk takers and last one to recover money in business are proposed to have capital reduction of 90% their existing shareholding & continue to hold balance 10% as a Shareholder of the Corporate Debtor.

- The liability of the petitioner to the respondent Commercial Tax Department form part of the contingent liability

40. The liability for the Commercial Tax Department has been shown as a contingent liability as per financial on 30.06.2018 as below:-

<u>j) Resolution for Disputed Legal case and Contingent Liabilities</u>

The Contingent Liabilities as per financials as on 30th June 2018 are given below : -

Name of Statutory Authority	*Nature of Dues*	*As on 30 June 2018*	*Period which the amount relates*	*Proposed Resolution*
Income Tax	Income tax demand and interest dues thereon	6.52#	FY 2001-02 to FY 2018-19	The case shall get disposed on account of settlement of claims under the Resolution Plan
Service Tax	Service Tax dues and audit	0.51	FY 2007-08 to FY 2017-18	
PF	Interest and Damages	0.62		
Central Sales tax Act, 1956 & Sales Tax/VAT tax	Tax due on Non-submission of forms and ITC Adjustments	053	March 2014 to June 18	
NSE and BSE	Interest on listing Fees Approval	1.22	March 17 to till date	
Ministry of Commerce-Additional Director General of Foreign Trade	Penalty under Section 11(2) of Chapter IV of Foreign Trade (Development & Regulation) Act, 1992	0.73	FY 2013-2014	
Property Tax	Grandyon : Property Tax due	0.13	FY 15-16 till date	

41. It is curious to note that the publication was effected on the 2nd day of order dated **16.07.2018** i.e on **18.07.2018** even before the Interim Resolution Professional would have been communicated of the Order dated **16.07.2018** of National Company Law Board (NCLT), in the normal course. Unless the entire proceeding was pre-planned and was stage managed advertisement would not have been issued on 18.07.2018 with alacrity. Such a hurry in the proceedings

appears irregular and not bonafide.

42. The proceeding that was initiated before the National Company Law Board (NCLT) with the presentation of a petition under Section 8 of the IBC, 2016 on **16.07.2018** appears to be staged managed with a view to defeat the rights of scores of creditors including operating creditors such as the respondent Commercial Tax Department.

43. Mere paper publications of notice to the financial creditors and the operational creditors is not sufficient. Fixing **31.07.2018** as the last date for filing claim statement also shows undue alacrity is getting orders for NCLT to defeat the rights of creditors of the petitioner.

44. The petitioner appears to have orchestrated the proceeding under Section 8 of the IBC, 2016. The entire proceedings was speed tracked before the NCLT with a view to get unjust concession from the NCLT without actual participation of any of the creditors particularly operating creditors like the

respondent Commercial Tax Department.

45. A reading of the Corporate Insolvency Resolution Plan that was filed on **20.12.2018** by the promoter of the petitioner and approved by the National Company Law Board (NCLT) vide its order dated **01.02.2019** shows several discrepancies.

46. The Order passed by the National Company Law Board (NCLT) on **01.02.2019** approving the Corporate Insolvency Resolution Plan filed by Mr.Mahavir Chand Bafna, promoter of the petitioner Company on **20.12.2018** as a resolution applicant before the National Company Law Board (NCLT) CP/682(IB)/CB/2017 has also not disclosed the names of any of the financial creditors and the operational creditors and the details of discussion of the Committee of the Creditors (COC) before the Corporate Insolvency submitted by Mr.Mahavir Chand Bafna, the promoter of the petitioner.

47. It merely states that the meeting of the Committee of Creditors (COC) was held on **27.09.2018, 30.11.2018** and **20.12.2018**. It further records that the Committee of Creditors (COC) after deliberation approved the Corporate Insolvency Resolution Plan submitted by the Corporate debtor i.e. the promoter of the petitioner Mr. Mahavir Chand Bafna by passing the Resolution on **04.01.2019**.

48. It is curious note that paltry for a sum of **Rs.11,35,353/-** due to the so called operating creditor, proceedings were initiated and Corporate Insolvency Resolution Process was initiated by the promoter of the petitioner which was approved whereby a complete waiver of tax due to the Commercial Tax Department, Income Tax Department and Service Tax Department apart from other statutory authorities was accepted. Similarly, amounts allegedly due of the secured financial creditors were also allowed to be reduced from **Rs.49.23 crores to Rs.34.46 crores.** However, there are no details.

49. Under Section 65 of the Insolvency Bankruptcy Code, 2016 Insolvency Resolution Process or proceedings initiated fraudulently for any

purpose other than for the resolution of insolvency warrants imposition of penalty not less than one lakh rupees which may extend to one crore rupees by the Adjudicating Authority.

50. Section 65(1) of the Insolvency Bankruptcy Code, 2016 reads as under : -

> 65. Fraudulent or malicious initiation of proceedings:
>
> (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.
>
> (2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

51. NCLT as the Adjudicating Authority ought to have been careful before approving the Corporate Insolvency Resolution Process initiated by the promoter of the petitioner company. NCLT ought to have imposed penalty on the petitioner instead of sanctioning the plan.

52. Entire course of event before NCLT shows that the proceedings initiated before the NCLT under Section 8 of the Insolvency Bankruptcy Code, 2016 was intended to defeat the rights of the financial creditors and the operational creditors and at behest of the petitioner. It was stayed managed by the petitioner itself.

53. Therefore, the challenge to the impugned demand notice based on the order secured by the petitioner from NCLT on 01.02.2019 in C.P/682(IB)/CB/2017 is unsustainable. Therefore, this writ petition is liable to be dismissed.

54. This writ petition stands dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2024

Index : Yes/No
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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To

The Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Integrated Commercial Taxes Office Complex,
Survey No.1275/3, 3rd Floor,
Elephant Gate Bridge,
Next to Elephant Gate Police Station,
Vepery, Chennai 600 003.

Pre-delivery Order in
W.PNo.14475 of 2020