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W.P.Nos.18702 & 18705 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.18702 & 18705 of 2024
and W.M.P.No.20507, 20508,20511 & 20513 of 2024

Management,
Hosur National Plywood Thozhilalar Industries Limited,
Plot No.215/2,
Hosur – Thali Road,
Kalukondapalli 635 114
Krishnagiri District
Rep. by its Resolution Profession of
Mr.Amit Pareek

... Petitioner in both W.P's.

/vs/

Secretary,
Hosur National Plywood Thozhilalar Munnetra Sangam
(Hosur National Plywood Employees Progress Association)
D.M.K. Office,
Pelakondapalli,
Denkanikottai 635 114
Krishnagiri District.

... Respondent in W.P.No.18702/2024

Secretary,
Hosur National Laminate Staff Employees Union,
19/28, Sivashakti Nagar,
Hosur – 635 109,
Krishnagiri District.

... Respondent in W.P.No.18705/2024



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Writ Petitions are filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the Presiding Officer, Labour Court, Hosur in ID No.181/2019 dated 17.02.2021 & I.D.No.04/2021 dated 21.01.2022 and quash the same as illegal, arbitrary and devoid of merits and consequentially direct the respondent herein to submit their claims before the Resolution Professional of National Plywood Industries Limited, having Regd. Office at P.O.MakumPathar, Marghrita, District, Tinsukia, Assam – 786 187 as per the procedure of Insolvency and Bankruptcy Code, 2016.

For Petitioner ... Mr.G.Sudhakar
(in both W.P's.)

For Respondents ... Mr.E.K.Kumaresan
(in both W.P's.)

COMMON ORDER

This writ petition has been filed challenging the award of the Labour court, Hosur in I.D.No.181/2019 dated 17.02.2021. On an Industrial Dispute raised by the respondent Sangam claiming that the lockout is illegal the Labour Court has passed an award allowing the Industrial Dispute by holding that the lockout is illegal.



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3. The crux of the submission of the learned counsel for the petitioner is that once NCLT has passed an order by appointing the Resolution Professional during the insolvency proceedings initiated already under the Code, there is a moratorium and any orders passed during the pendency of the moratorium by any forum will not bind upon the petitioners. When the above order appointing the Resolution Professional was made on 26.08.2019, the Industrial Dispute in I.D.No.181/2019 was pending before the Labour court. In fact the petitioner has filed a memo stating that the moratorium is pending in view of the order dated 26.08.2019 passed by the NCLT. However, the petitioner has not chosen to make his appearance and



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persuade the Court about the impact of the order dated 26.08.2019. The learned Presiding Officer of the Labour Court has also not overlooked the above fact and has observed in his order that the petitioner did not make his appearance to update the Court whether the Company Petition is still pending.

4. However the learned counsel for the respondents submitted that so far as the proceedings before the Labour Court in determining whether the lockout is legal or illegal there is no hurdle and the order dated 26.08.2019 cannot be considered as moratorium for the above limited aspect.

5. Attention was drawn to the judgment of the Hon'ble Supreme Court in ***Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs reported in (2023) 1 SCC 472*** wherein it is held as under:

“ ...

56. For the sake of clarity following questions, may be answered as under:

a) Whether the provisions of the IBC would prevail over the *Customs Act*, and if so, to what extent?



56.1 *The IBC would prevail over [The Customs Act](#), to the extent that once moratorium is imposed in terms of [Sections 14](#) or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the [Customs Act](#).*

b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the [Customs Act](#) when the liquidation process has been initiated?

56. Answered in negative.

57. On the basis of the above discussions, following are our conclusions:

57.1 Once moratorium is imposed in terms of [Sections 14](#) or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the [Customs Act](#).

57.2 After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure [laid down](#), [in](#) strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.



57.3 In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.

58. Resultantly, we allow the appeal and set aside the impugned order and judgment of the NCLAT. There shall be no orders as to costs”.

6. By applying the similar logic the learned counsel for the respondents claim that the Labour Court would still have the jurisdiction irrespective of the appointment of the Resolution Professional.

7. Much emphasis has been made by the learned counsel for the petitioner by relying upon another judgment of NCLT of Mumbai Bench made in I.A.No.2415/2023 in C.P.(IB)/315(MB)/C-III/2019 wherein the claim of the Union was rejected by the Resolution Professional for the gratuity claimed by the Union on the basis of the determination made by the Labour Court. The association of workers has filed an interim application by claiming the relief to declare that the rejection of the Resolution Professional on the claim lodged by the applicant is illegal and directed the Resolution Professional to admit the said amount. After hearing both sides,



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the NCLT has recorded that the authority concerned has got jurisdiction to assess and determine the custom duty during moratorium and similarly the Labour Court has also determined the gratuity amount during moratorium under Section 14 of the Code and it has not ordered for any recovery. After the entitlement was determined by the Labour Court, the applicant / association therein has filed a claim petition before the Resolution Professional and hence it is held that the Resolution Professional is duty bound to consider and admit the claim after the verification.

8. In the instant case also the Labour Court has taken up the issue of lockout declared from 26.02.2018 as illegal. The petitioner establishment did not appear before the Court by strongly believing that the Labour Court will not take up the matter in view of the memo filed stating that the moratorium is pending. Though the labour Court has taken notice of the memo, it has proceeded to deal the matter and observed that the lockout is illegal and that the workers are entitled to wages from 26.02.2018. In fact before the labour Court the petitioner establishment did not even make his appearance to make any submission on the point whether the Labour Court has got any



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jurisdiction to deal with the matter and render any finding in respect of the issue raised before the labour court during the pendency of the moratorium.

In fact the petitioner establishment has filed an Interlocutory Applications to set aside the *ex parte* order by dismissing the same. However the petitioner has not chosen to challenge the said order by being complacent about the fact that the petitioner's name has not been properly mentioned in the short cause title.

9. It is claimed by the petitioner that in the short cause title the petitioner has been mentioned as “National Plywood Thozhilalar Munnetra Sangam” instead of “National Plywood Industries Limited”. But the petitioner is aware of the fact that he is the party who has been impleaded in all the Industrial Disputes and he has made his appearance and even filed a memo stating that the Resolution Professional has been appointed and as per the order of the Tribunal dated 26.08.2019 a moratorium is pending under Section 14 of the Code.



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10. Even if the matter is disposed before the Labour court it is always open to the petitioner to file an application to make amendment to the short cause title on the basis of the submission now made by the petitioner. But that alone cannot be the reason to state that the award did not bind the petitioner. So far as the legal issue as to whether the Labour Court has got the jurisdiction to deal with the issues raised in the Industrial Dispute, it has been settled even as per the decision of NCLT, Mumbai that the Labour Court is not precluded from deciding and determining the rights and entitlement so long as it does not issue any order for recovery.

11. In the instant case also the Labour Court has averted only to design whether the lockout during the relevant time was illegal and thereafter the respondent Union has chosen to file the claim petition only before the Resolution Professional and they have not filed any other proceedings before the Labour court to enforce the award. Even the petition filed by the petitioner establishment to set aside the same also got dismissed and the petitioner did not challenge the same. In view of the same, the award passed by the Labour Court has attained finality and it is very much binding



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upon the petitioner.

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12. It is up to the respondents to initiate appropriate proceedings before the NCLT, Guwahati if the Resolution Professional dismisses the claim of the respondent. So far as the ID made by the respondents as to the legality of the award passed by the Labour court, I hold that the Labour Court has got the jurisdiction to deal with the Industrial Dispute even though the Resolution Professional has been appointed so far as it did not issue any direction for recovery.

13. In view of the above stated reasons, this Writ Petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

17.10.2024

Index: Yes / No
Speaking order / Non-speaking order
bkn



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To:
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The Presiding Officer, Labour Court,
Hosur



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R.N.MANJULA ,J.

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