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

\+ W.P.(C) 11617/2021

NARESH KUMAR SHARMA .....Petitioner

Through: Mr. Vishwendra Verma, Ms. Shivali, Archit Verma, Ms. Riya Ku and Mr. Ajay Nagar, Advocates.

versus

MINISTRY OF CORPORATE AFFAIRS AND ORS .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **12.07.2024**

1. The Petitioner, Mr. Naresh Kumar Sharma, formerly part of the management team at Shekhar Resort Limited[1], has filed the present petition alleging infringement of his fundamental rights and seeking the following prayers:

> *"(i) Direct the respondent no.1 Ministry of Corporate Affairs to define the fair value, as without the definition in the enactment, the Authorities, Financial Institutions or other judicial or quasi-judicial bodies are arbitrarily deciding the fair value;*
> *(ii) Direct the Respondent no.2 NCLT to act in accordance with law and Notifications and also comply with the provisions of law and thereby examine the matter of the petitioner as per law;*
> *(iii) Direct the respondent no.2 NCLT to comply with the judgment passed by the respondent no.3 NCLAT dated 16.09.2019 and after assessing the fair value, the valuation of the properties of the petitioner to be examine as per Government Circle rates/ prevalent rate as assessed by Government*

[1] "Shekhar Resort"

Authorities;
(iv) Issue direction to the respondents to examine the Valuation Report/ as per Circle rates of the Government to the properties of the Ex-management i.e. Shekhar Resort Pvt. Ltd. in the interest of justice."

2. The genesis of the dispute is the recovery action instituted by Punjab National Bank[2] in respect of Shekhar Resort's mortgaged assets under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[3]. This notice prompted Petitioner to file a securitization appeal [SA No. 539/2016] before the Debts Recovery Tribunal (DRT) in Lucknow. In the said proceedings, Petitioner presented a restructuring proposal aimed at ameliorating the financial situation, which PNB did not accept. Instead, PNB escalated the matter by issuing a notice under Section 13(4) of SARFAESI Act, and further pursued legal recourse by filing a petition [CP No. (IB) 22 (PB) of 2017] before the National Company Law Tribunal, Delhi Bench.

3. The grievance urged in the present petition pertains to the orders and proceedings of Respondent No. 2, the National Company Law Tribunal (NCLT). According to the Petitioner, the NCLT has authorized the disposal of properties belonging to Shekhar Resort, which were mortgaged to Respondent No. 5, Oriental Bank of Commerce (now PNB), in an arbitrary manner. The Petitioner alleges that these properties were sold for a value significantly below their fair market value– specifically, at less than one-third of the government prescribed circle rate and one-fourth of their marketable value. Petitioner further contends that the NCLT failed to adhere to the directions issued by the National Company Law Appellate Tribunal

[2] "PNB"

(NCLAT) on 16th September, 2019, which mandated a careful assessment of the fair value of the properties based on the government circle rates, before sanctioning any resolution plan. NCLT's oversight in this respect led to a substantial undervaluation in the sale of the mortgaged properties, which in turn adversely affected the company's financial and legal standing. Additionally, it is argued that the Interim Resolution Professional (IRP), appointed by the NCLT, also acted arbitrarily in managing the resolution process.

4. In order to demonstrate the actual worth of the properties and to challenge the figures that were being considered in the resolution plan, Petitioner presented an alternative valuation report, based on the circle rates of the Government of Uttar Pradesh. Petitioner further contends that the Respondents failed to consider the same or provide him with the valuation report that was relied upon during the resolution proceedings, compromising his ability to mount an effective challenge. Despite the Petitioner's objections and submission of an alternative valuation report, the NCLT proceeded to accept the undervalued resolution plan.

5. Dissatisfied with the NCLT's decision, the Petitioner escalated the matter to the NCLAT, specifically challenging the undervaluation of the properties. Despite these efforts, the Petitioner's concerns were not addressed, as the NCLAT overlooked his objections, leaving issues regarding fair valuation unresolved. The Petitioner contends that this dismissal by the NCLAT casts doubt on the asset valuation criteria employed in insolvency proceedings, questioning the adequacy and

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[3] "SARFAESI Act"

transparency of such evaluations. Further, relying upon judgments of Supreme Court in ***Agra Diocesan Trust Association v. Anil David and Ors.***[4] and ***ITC Limited vs Blue Coast Hotels Ltd. & Ors.***[5], the Petitioner seeks to canvas the difference between market value and the circle rate.

6. In the opinion of the Court, the present petition is fundamentally misconceived. The core of the Petitioner's grievances stems from the proceedings conducted under the Insolvency & Bankruptcy Code, 2016.[6] The Petitioner has pursued available remedies under the IBC. Pertinently, the issues concerning the valuation of the properties in question were extensively deliberated upon before the NCLAT.

7. The Resolution Plan formulated on the basis of the valuation of the properties of Shekhar Resort has received approval from the Committee of Creditors (CoC), Adjudicating Authority and also the NCLAT. Therefore, there is no ground for this Court to reconsider the issue of valuation of the properties in the present proceedings. It is also crucial to note that the Petitioner has not fully exhausted the appellate remedies available under the IBC. The IBC provides for an appeal to the Supreme Court of India against the decision by the NCLAT. In view of the availability of an alternate remedy, there is no reason for this Court to entertain the present petition under Article 226 of the Constitution of India. Moreover, as mentioned in the petition, an appeal has indeed been filed against the order of NCLAT, which is pending consideration before the Supreme Court. Since the Supreme Court is already seized of the core issues contested here, the Court

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[4] (2020) 19 SCC 183
[5] (2018) 15 SCC 99
[6] "IBC"

finds no substantial grounds to warrant intervention under Article 226 of the Constitution of India. Petitioner's allegations that the NCLT did not act in consonance with the directions issued by NCLAT, or that Petitioner was denied the opportunity of hearing, can be urged in the pending appeal. Thus, reliefs (iii) and (iv) cannot be entertained in the present proceedings.

8. At this juncture, it must also be noted that Petitioner has specifically relied upon Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016[7], which stipulates the mechanism for ascertainment of fair value and liquidation value of the corporate debtor's assets. This provision illustrates the statutory framework under the IBC for independent and accurate valuation of properties involved in insolvency proceedings. Thus, there exists a defined mechanism for determining the fair value of properties and Petitioner's first prayer is misconceived.

9. Furthermore, the prayer clause (ii) is characterized by its broad and general scope. Specifically, the Petitioner seeks directions for the NCLT to act in accordance with existing laws and notifications. These directions seek the Court's directions to reaffirm obligations that are already statutorily in place. Thus, the Court holds issuing a writ of *mandamus* to compel a statutory body to perform its actions as both redundant and unnecessary. The legal framework under IBC includes adequate checks and oversight mechanisms to ensure compliance with the law, thereby making the sought-after directions superfluous.

10. Thus, given the general nature of the reliefs and the adequacy of

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[7] "CIRP Regulations"

existing legal mechanisms to address the Petitioner's concerns, the present petition is dismissed on the grounds of redundancy and lack of necessity for judicial intervention.

11. The present petition is dismissed, along with pending application(s), if any.

SANJEEV NARULA, J

JULY 12, 2024
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