IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112 **CWP-11188-2025**
Date of decision : 01.05.2025

Girnar Fibres Limited
... Petitioner

Versus

The National Company Law Tribunal, Chandigarh Bench-1 and another
... Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present:- Mr. Anand Chhibbar, Senior Advocate with
Mr. Shikhar Sarin, Advocate,
Mr. Vaibhav Sahni, Advocate for the petitioner.

Mr. Akshay Bhan, Senior Advocate with
Mr. Himanshu Sharma, Advocate and
Mr. Shaurya Khanna, Advocate for respondent No.2.

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Anupinder Singh Grewal, J. (Oral)

The petitioner is seeking a writ in the nature of mandamus directing the NCLT, Chandigarh Bench-I (respondent No.1) to adjourn the insolvency petition bearing CP(IB) No.197 of 2023 (Annexure P-18), titled as 'Proma Industries Limited vs. Girnar Fibres Limited' till the decision by the Civil Court in Civil Suit No.5170 of 2013. A further direction has been sought to respondent No.1 to first decide IA No.1119 of 2024 (Annexure P-22) before deciding the insolvency petition preferred by respondent No.2.

2. Learned Senior counsel for the petitioner submits that the petitioner has filed a civil suit seeking permanent injunction against the assignment of debt to respondent No.2-Proma Industries Ltd., which is pending adjudication before the Civil Court. After the assignment of the debt, the

petitioner had sought amendment of the pleadings and the application for amendment is also pending adjudication before the Civil Court. The Civil Court had declined the application seeking an *ad interim* injunction but in the appeal preferred by the petitioner before the Appellate Court, the effect of assignment of the debt beyond Rs.4 crores has been stayed. He, therefore, submits that as the assignment of debt to respondent No.2 is under challenge and the effect of assignment beyond Rs.4 crores has been stayed by the Appellate Court, the petition preferred by respondent No.2 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as, 'IBC') before the NCLT would not be maintainable as the petition is without any basis or foundation. He further submits that the Civil Court does not have the power to stay proceedings initiated before the NCLT therefore, the petitioner has invoked the extraordinary writ jurisdiction of this Court. Learned counsel has cited the judgment of the Supreme Court in the case of **M/s Embassy Property Developments Pvt. Ltd. Versus State of Karnataka and others, (2020) 13 Supreme Court Cases 308**.

3. Learned Senior counsel for respondent No.2 submits that the petitioner has preferred an IA in the insolvency petition preferred by respondent No.2 under Section 7 of IBC raising similar issues which have been taken herein and claiming the relief which he has sought in the instant petition. He also submits that although the petitioner has pleaded in the instant petition that the NCLT is not hearing his IA, but the order sheet indicates that the petitioner itself has sought adjournments on 01.04.2025 and 22.04.2025 to address arguments despite availing sufficient opportunity. He also submits that IBC is a complete Code in itself and interference by this

Court at this juncture would be wholly unwarranted in view of law laid down by the Supreme Court in the case of **Mohammed Enterprises (Tanzania) Ltd. Versus Farooq Ali Khan and others, AIR 2025 Supreme Court 1079.**

4. Heard.

5. The petitioner is a borrower and is aggrieved by the assignment of debt by the secured creditor i.e. IFCI Ltd. in favour of respondent No.2-Proma Industries Ltd. The petitioner had earlier preferred CWP No.5369 of 2010 seeking a writ in the nature of mandamus prohibiting IFCI Ltd. from assigning the loan in favour of respondent No.2. This Court on 25.03.2010, had stayed the assignment of loan advanced to the petitioner to any other person. However, on 15.03.2011, this Court had also observed that the counsel for respondent No.2 therein (respondent No.2 in the instant petition as well) was justified in submitting that either the money be refunded with interest or the total investment of the Company be assigned in its favour and the matter was adjourned to 22.03.2011 to enable the counsel for the petitioner to seek instructions in that regard. The relevant extract of the order dated 15.03.2011 is reproduced hereunder:-

> *"Counsel for respondent No.2 is justified in submitting that either the money be returned with interest or the total investment of the Company be assigned in its favour. Thus, respondent No.2 is ready and willing to quit if its total investment is returned to it with interest. Mr. Bali prays for time to have instructions in this regard."*

6. However, the petitioner had withdrawn the petition on 22.03.2011 with liberty to seek recourse to the alternative remedy in accordance with law. The petitioner had preferred a civil suit seeking permanent injunction from assignment of debt to respondent No.2 (defendant No.2 therein) and the Civil Judge had directed the parties to maintain status quo on 09.05.2011. However,

on 29.08.2019 (Annexure P-15), the application of the petitioner seeking *ad interim* injunction from assignment of debt to respondent No.2 (defendant No.2 therein) was dismissed while observing that respondent No.2 has paid the money and thus, the assignment cannot be stopped.

7. An assignment agreement was later executed between IFCI Ltd. and respondent No.2 on 25.04.2023. Thereafter, respondent No.2 issued the Demand notice to the petitioner asking it to pay Rs.4109.62 lakhs against the outstanding dues along with interest thereon. The petitioner thereafter preferred another application before the Civil Court seeking stay of assignment agreement. The said application was dismissed by the Civil Court on 02.09.2024 [Annexure P-17 (colly.)] and the petitioner preferred an appeal thereagainst before the Appellate Court. The Appellate Court vide order dated 13.12.2024 (Annexure P-21) had stayed the effect of assignment beyond Rs.4 crores. However, this order of the Appellate Court has been challenged by the respondent No.2 before this Court by preferring CR No.153 of 2025 which is pending adjudication for 20.05.2025.

8. It is, thus, manifest that respondent No.2 has preferred an insolvency petition under Section 7 of the IBC which is pending adjudication before the NCLT, Chandigarh, where the petitioner is the sole respondent. The petitioner has preferred an IA No.1119 of 2024 in the insolvency petition which is also pending adjudication before the NCLT and the relief claimed in the IA is reproduced hereunder:-

> ***"Prayer***
>
> *In the premise, it is most respectfully prayed that this hon'ble Tribunal may graciously be pleased to:-*
>
> *1. Allow the present application.*

> *2. Pass consequential directions under Section 65 of the Code against the Financial Creditor for fraudulent and malice initiation of corporate insolvency resolution process.*
>
> *3. Grant ad-interim stay on the proceeding of CP(IB) No.197/CHD/PB of 2023 in during the pendency of this present application.*
>
> *4. Dismiss the CP(IB) No.197/CHD/PB/2023 filed by the applicant financial creditor."*

9. In the instant petition, the petitioner has sought a direction to the NCLT that the IA be decided before it decides the insolvency petition. However, it is not for this Court to direct the NCLT as to how and in what manner, it should proceed to decide the petition which is pending adjudication before it. The zimini orders passed in the I.A. indicate that it is the petitioner itself, who has sought adjournments on the last two dates of hearing.

10. Furthermore, the prayer of the petitioner for directing the NCLT to adjourn the insolvency petition till the Civil Court decides the suit is wholly misconceived and frivolous. This Court would be circumspect in invoking its extraordinary writ jurisdiction when the insolvency petition is pending adjudication before the NCLT. It is trite that the IBC is a complete Code and adequate remedies have been provided under the same. Reference may be made to the judgment of the Supreme Court in the case of **Mohammed Enterprises (Tanzania) Ltd.(supra)** where the relevant extract is reproduced hereunder:-

> "15. Apart from delay and laches, High Court should have noted that Insolvency and Bankruptcy Code is a complete code in itself, having sufficient checks and balances, remedial avenues and appeals. Adherence of protocols and procedures maintains legal discipline and preserves the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in High Courts represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious

application. This is certainly not a case for the High Court to interdict CIRP proceedings under the Insolvency and Bankruptcy Code."

11. Reference may also be made to the judgment of the Supreme Court in the case of **Bank of Baroda versus Farooq Ali Khan and others, 2025 SCC Online SC 374** and the relevant extract is reproduced hereunder:-

> "11. It is well-settled that when statutory tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Courts do not substitute themselves as the decision-making authority while exercising judicial review. In the present case, the proceedings had not even reached the stage where the Adjudicatory Authority was required to make such determination. Rather, the High Court exercised jurisdiction even prior to the submission of the resolution professional's report, thereby precluding the Adjudicating Authority from performing its adjudicatory function under the IBC.
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> 12. While there is no exclusion of power of judicial review of High Courts, and the limits and restraint that the constitutional court exercises and must exercise are well articulated, the primary issues involved in the present case, including the factual determination of whether the debt exists, is part of the statutory and regulatory regime of the Insolvency and Bankruptcy Code. In fact, the entire rationale behind appointing a resolution professional under Section 97 is to facilitate this determination by the Adjudicating Authority. The High Court ought not to have interdicted the proceedings under the statute and assumed what it did while exercising jurisdiction under Article 226 of the Constitution. In this view of the matter, we are of the opinion that the High Court was not justified in allowing respondent no. 1's writ petition. The High Court should have permitted the statutory process through the resolution professional and the Adjudicating Authority to take its course.

12. Learned Senior counsel for the petitioner has relied upon the judgment of **M/s Embassy Property Developments Pvt. Ltd. (supra)** but the same is distinguishable on facts from the instant case and would not help the case of the petitioner. In that case, it was held that the dispute arising out of the grant of mining lease deeds under the Mines and Minerals (Development and Regulation) Act, 1957 between the State lessor and the lessee relating to

fraudulent and collusive mining ought to have been decided by the High Court and not by the NCLT. It was, however, held by the Supreme Court that the NCLT is vested with the power to inquire into the fraudulent initiation of proceedings as well as fraudulent transactions as per Section 65(1) of IBC which deals with a situation where CIRP is initiated fraudulently by any party other than for the resolution of insolvency or liquidation. In the instant case, no such issue has been raised which cannot be adjudicated by the NCLT.

13. In view of the above, we do not find any merit in the petition seeking directions to the NCLT to adjourn the matter till the decision in the civil suit and to decide the IA before deciding the insolvency petition as already observed hereinbefore, it is not for this Court while exercising extraordinary writ jurisdiction to direct the Tribunal as to why and in what manner it should proceed to adjudicate the petition under Section 7 of the IBC.

14. Consequently, we do not find any merit in this petition which stands dismissed.

15. It is, however, clarified that the observations made hereinabove are only for deciding this writ petition and would not have any bearing on the adjudication by the NCLT/Competent Court.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

May 01, 2025
sonia gugnani

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No