

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Writ Petition NO. 506 OF 2026

Sunil G. Kundnani .. Petitioner

V/S.

Union of India, Through Secretary, .. Respondent
Ministry of Corporate Affairs

Mr. Pratik Sarkar (VC) with Ranjit N. Varma i/by Vidhi Legal, for the petitioner.

Adv. Swetabja Mondal i/by Rui Rodrigues, for Respondent No. 2.

Mr. Mohit Khanna with Shyam Kapadia, Roshan Gaud and Tejas Singh i/by Orbit Law Services, for Respondent No. 3.

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.**

DATE : 11TH JUNE 2026.

PC:

1. Heard the learned counsel for the parties.
2. By this petition, the petitioner has challenged order dated 08/07/2024 passed by the National Company Law Tribunal, Mumbai (NCLT), whereby an application seeking recall of an earlier order dated 03/05/2024 has been dismissed.
3. It is to be noted that the petitioner has not challenged the said order dated 03/05/2024, either in this Writ Petition or by way of statutory appeal before the National Company Law Appellate Tribunal (NCLAT).
4. The contesting respondent No. 3 has raised a preliminary

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objection with regard to the very maintainability of this Writ Petition, contending that an alternate efficacious statutory remedy in the form of an appeal before the NCLAT is available for the petitioner and therefore, on this short ground, the petition deserves to be dismissed.

5. It is also contended on behalf of the said respondent that there is no challenge to the main order dated 03/05/2024 and that perusal of the same would show that all the relevant contentions raised on behalf of the petitioner were considered, and therefore, there is no prejudice caused to the petitioner to knock the doors of the writ Court.

6. We find that the petitioner has indeed chosen to challenge only the impugned order dated 08/07/2024 in writ jurisdiction before this Court and that there is no challenge to the aforesaid order dated 03/05/2024.

7. It is an admitted position that the alternate efficacious remedy in the form of the statutory appeal before the National Company Law Appellate Tribunal (NCLAT), is available to the petitioner under Section 61 of the Insolvency and Bankruptcy Code (IBC), 2016.

8. Learned counsel for the petitioner has relied upon the judgments of the Supreme Court in the cases of 'State of A.P. Vs. P.V. Hanumantha Rao (dead) through LRs. and Anr'¹. 'PHR Invent Educational Society Vs. UCO Bank and Ors'² 'B.K. Maniraju Vs. State of Karnataka and Ors'³ to contend that despite availability of an alternative remedy, the writ Court can entertain the Writ Petition, particularly when the petitioner is not challenging the finding arrived at by the Tribunal, but, the process by which such a finding is arrived at.

1 (2003) 10 SCC 121

2 (2024) 6 SCC 579

3 (2008) 4 SCC 451

9. It was also submitted that established procedure was violated by the NCLT while passing the impugned order and, therefore, as per the law recognised by a Division Bench of this Court in the case of 'Kamal K. Singh Vs Union of India, through the Ministry of Corporate Affairs and Ors'⁴, the present Writ Petition ought to be entertained in order to challenge the impugned order.

10. It was further submitted on behalf of the petitioner that the procedural irregularity, which caused grave prejudice to the petitioner, is evident from the manner in which the NCLT has passed the impugned order. It is emphasised that written submissions were placed before the NCLT before the hearing of Interim Application No. 1133 of 2022, which was disposed of by order dated 03/05/2024. Despite the written submissions of the petitioner being placed before the NCLT, the same were completely ignored when the order dated 03/05/2024 was passed. In the impugned order, when the aforesaid irregularity was pointed out, the NCLT proceeded to reject the said application on a completely incorrect factual basis.

11. By referring to paragraph 7 of the impugned order, it was submitted that reference was made to the written submissions of the respondent, lying in defect, to reach a conclusion that the said written submissions were those of the petitioner and since they were lying in defect, they could not be considered by the NCLT.

12. It was submitted that this led to grave prejudice being suffered by the petitioner and hence, not only is the Writ Petition maintainable but it deserves to be allowed in the facts and circumstances of the present case.

4 2019 SCC online bom 5609

13. On the other hand, learned counsel appearing for the contesting respondent No. 3. submitted that the statutory remedy under Section 61 of the IBC is very much available to the petitioner. In any case only the order dismissing the application for recall of order dated 03/05/2024 has been challenged, while the said main order dated 03/05/2024 has not been made the subject matter of challenge. As a matter of fact, the orders need to be challenged by way of filing a statutory appeal under Section 61 of the IBC and the Writ Petition ought not to be entertained.

14. Without prejudice to the aforesaid submissions, attention of this Court was invited attention to the order dated 03/05/2024 to emphasise that in paragraph Nos. 2.1 to 2.6 of the said order, the NCLT has taken into consideration the contentions raised on behalf of the petitioner. After considering the said contention, the NLCT rejected the same and also observed that the question as to whether the applicant can be excluded as a respondent in Interim Application No. 1444 of 2021 was left open to be decided on its merits.

15. It was also highlighted that the said aspect is still pending before the NCLT, where the petitioner would certainly have an opportunity to meet the case on its own merits. On this basis, it was submitted that there is no substance in the present Writ Petition.

16. Having considered the rival submissions, we find substance in the objection regarding maintainability raised on behalf of respondent No.3. We find that a statutory alternative efficacious remedy in the form of appeal under Section 61 of the IBC is available to the petitioner. Nothing prevented the petitioner from challenging the aforesaid orders before the NCLAT under the said provision. Merely

stating that the petitioner is not challenging the finding and only the process by which such finding was reached by NCLT, cannot be a ground for maintaining the Writ Petition before this Court.

17. We find that the petitioner would very well have challenged the impugned order before the NCLAT. In any case, we find that the order dated 03/05/2024, which is indeed the substantive order in the facts and circumstances of the present case, has not been challenged by the petitioner by taking recourse to the statutory remedy under Section 61 of the IBC.

18. We also find that the petitioner is not justified and relying upon the aforementioned judgments of the Supreme Court in the cases of 'State of A.P. Vs. P.V. Hanumantha Rao (dead) through LRs. and Anr' (supra), 'PHR Invent Educational Society Vs. UCO Bank and Ors' (supra) 'B.K. Maniraju Vs. State of Karnataka and Ors (supra), simply for the reason that the parameters identified by the Supreme Court in the said judgments within which the writ Court can exercise its extraordinary jurisdiction despite availability of an alternative remedy, are not made out by the petitioner in the facts and circumstances of the present case.

19. We do not find that the NCLT in any manner has exceeded jurisdiction or that there has been violation of any rules of natural justice or that there is any procedural irregularity warranting exercise of writ jurisdiction in the facts and circumstances of the present case.

20. As regards the judgment of 'Kamal K. Singh Vs Union of India, through the Ministry of Corporate Affairs and Ors' (supra), we find that the said case concerned a gross violation of established procedure when a judgment was delivered by the NCLT in a proceeding without

the same being posted for judgment in the cause list for the day. This had caused grave prejudice to the concerned party and in such circumstances a Division Bench of this Court thought it fit exercise writ jurisdiction despite an alternative remedy by approaching NCLAT.

21. Even otherwise, we find that the petitioner has not suffered any prejudice, only because his written submissions were not referred to by the NCLT while passing the order dated 03/05/2024. In paragraph 2.1 to 2.6 of the said order, the contentions of the were duly recorded and considered. Hence, no procedural irregularity can be attributed in that regard. Besides, the question as to whether the petitioner can be excluded as a respondent in Interim Application No. 1444 of 2021 is open for being decided on merits in the pending proceeding before the NCLT.

22. Hence, we are of the opinion that no case is made out to entertain this petition seeking to invoke the extraordinary writ jurisdiction of this Court.

23. Hence, the Writ Petition is dismissed. Pending applications, if any, are also disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)