*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ Civil Revision Petition No.377 OF 2020

% 12.02.2024

Between:

Ramky Infrastructure Limited **Revision Petitioner**

Vs.

Hi-reach Construction Equipments (P) Ltd. **Respondent**

! Counsel for Revision Petitioner : Sri M. Pranav

^ Counsel for Respondent : Amir Bavani

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? Cases referred :

1. Civil Appeal No.7491 of 2023 decided on 06.11.2023
2. (2022) SCC Online SC 1262
3. Writ Appeal No.734 of 2022 decided on 14.09.2022
4. (2001) 6 SCC 569
5. W.P.No.14398 of 2022 decided on 15.06.2022
6. W.P.No.11272 of 2000 decided on 23.11.2023
7. (1995) 1 Supreme Court Cases 614
8. (2004) 13 Supreme Court Cases 665
9. (2007) 9 Supreme Court Cases 593
10. MANU/SC/0664/1998 (CA No.5201 of 1998) decided on 26.10.1998
11. MANU/SC/0057/1952 (CA No.159 of 1951 decided on 17.03.1952)
12. MANU/SC/1180/2019 (CA No.6677 of 2019 decided on 28.08.2019)
13. 2022 SCC Online SC 620
14. (1997) 3 Supreme Court Cases 261
15. 2023 Live Law (SC) 70
16. Company Appeal (AT) (Insolvency) No. 1459 of 2019 decided on 16.12.2019
17. (2020) 10 SCC 538
18. (2018) 93 taxmann.com 315 (NCL-AT)
19. 2019 SCC Online NCLT 12268
20. Civil Appeal No. 9170 of 2019 (@ Special Leave Petition (C) No. 22596 of 2019) decided on 03.12.2019
21. CIVIL APPEAL No.7641/2019 decided on 18.02.2020

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL REVISION PETITION NO.377 of 2020

O R D E R:

This Civil Revision Petition is filed by the revision petitioner-Corporate Debtor under Article 227 of the Constitution of India, aggrieved by the Order dated 05.02.2020 in I.A.No.867 of 2019 in C.P.(IB).No.586/9/HDB/2019 passed by the learned National Company Law Tribunal, Hyderabad Branch, Hyderabad (for short 'the Tribunal'), wherein the said Interlocutory Application was closed as not maintainable.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned "Tribunal".

3. The applicant/Corporate Debtor filed application under Section 65 of the Insolvency and Bankruptcy Code, 2016 alleging that the Ledger Statement dated 14.04.2017 filed by the Operational Creditor-respondent in main Company Petition was never issued by the applicant-Corporate Debtor. The seal and signature are forged and fabricated. The said document does not belong to the applicant or its authorized signatories. Therefore, the applicant sought for a direction to respondent for producing the original of alleged ledger statement dated

14.04.2017, impose penalty under Section 65(1) of the Insolvency and Bankruptcy Code for malicious initiation and dismiss the company petition for malicious initiation.

4. To the above said application, the respondent-operational creditor filed reply alleging that the alleged ledger statement was provided by the applicant-Corporate Debtor itself and there is no requirement of providing its authenticity and further stated that 3 out of 5 purchase order issued by the applicant bear the same stamp of 'Ramky Group' which is claimed to be forged, and that the alleged ledger statement was not served on them with demand notice as the same is an additional document affirming outstanding dues.

5. The learned Tribunal after considering the rival submissions, closed the Interlocutory Application on the ground that it is not maintainable. Aggrieved by the same, the applicant filed this Civil Revision Petition to set aside the impugned order.

6. Heard both sides and perused the entire record including the grounds of revision.

7. It is the contention of the learned counsel for the revision petitioner that the original ledger statement dated 14.04.2017 is

in the custody of the respondent and the learned Tribunal ought to have directed the respondent to produce the original of the said document for proving the alleged forgery and prayed to allow the Civil Revision Petition.

8. It is the contention of the learned counsel for the respondent that the revision petitioner issued purchase orders dated 03.05.2012, 10.05.2012, 03.07.2012 and 07.07.2012 to respondent for supply of construction materials on its construction site and that due to failure to repay the dues, respondent issued a demand notice dated 13.05.2019 and petitioner issued a frivolous and false reply dated 21.05.2019 and that the respondent filed Company Petition (I.B.) No.586/HDB/2019 before the Tribunal and later filed impugned Interlocutory Application for production of original ledger statement dated 14.04.2017 and that the learned Tribunal rightly gave a finding that the application is beyond its jurisdiction to adjudicate the issue. It is also contended by the learned counsel for the respondent that there is alternative statutory remedy available under Section 61 of the Insolvency and Bankruptcy Code, 2016. Hence, he prayed this Court to dismiss this Civil Revision Petition.

9. Both the counsel have vehemently argued at length about the maintainability of the Civil Revision Petition in view of alternate statutory remedy available under Section 61 of the IBC, 2016. Thus, before going into the merits of the case, it is just and necessary to proceed with the key issue in this Civil Revision Petition i.e., whether the present Civil Revision Petition is maintainable or not.

10. Learned counsel for the respondent in support of his contention relied upon a decision of the Honourable Supreme Court in **M/s. India Glycols Limited and another v. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others**[1] wherein the impugned judgment of the High Court of Telangana was affirmed by holding that the petition which was instituted by the appellant to challenge the award of the Facilitation Council was not maintainable, in view of the provisions of Section 34 of the Act of 1996. In State of **Maharastra and others v. Greatship (India) Limited**[2] the Honourable Supreme Court observed as under:

> *"The Court while exercising its jurisdiction under Article 226 is duty – bound to consider whether:*
>
> *a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved*

[1] Civil Appeal No.7491 of 2023 decided on 06.11.2023
[2] (2022) SCC Online SC 1262

b) the petition revelas all material facts
c) the petitioner has any alternative or effective remedy for the resolution of the dispute.
d) person invoking the jurisdiction is guilty of unexplained delay and latches
e) ex facie barred by any laws of limitation
f) grant of relief is against public policy or barred by any valid law; and host of other factors."

It was further observed by the Apex Court at paragraph No.17 of the Judgment as under:

"In view of the above and in facts and circumstances of the case, the High Court has seriously erred in entertaining the writ petition against the assessment order. The High Court ought to have relegated the writ petitioner – assessee to avail the statutory remedy of appeal and thereafter to avail other remedies provided under the statue."

11. Learned counsel for the respondent in support of his contention further relied upon decision in **M/s. S.R. Technologies (Unit II) v. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others**[3] wherein the Division Bench of our High Court held that in so far maintainability of the writ petition is concerned, when respondent Nos.2 and 3 had an adequate, efficacious and alternate remedy under Section 34 of the 1996 Act, learned Single Judge ought not to have entertained the writ petition. In **Punjab National Bank v. O.C. Krishnan and others**[4] the Apex Court observed that the High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. In **Sunku Vasundhra**

[3] Writ Appeal No.734 of 2022 decided on 14.09.2022
[4] (2001) 6 SCC 569

v. State Bank of India[5] the Division Bench of Madras High Court observed that since the petitioners are having effective and statutory remedy before the Appellate Authority, they cannot come to Court invoking Article 226 of the Constitution of India and that if they are aggrieved, they have to work out their remedy by filing an appeal before the Appellate Authority.

12. On the other hand, the learned counsel for the revision petitioner relied upon a decision in **M/s. Regency Diaper Industries Limited v. United Bank of India, represented by its Chief Manager, Calcutta**[6] wherein the Division Bench of this Court observed that it is trite law that once the Writ Petition was admitted, after a long lapse of time, the petitioners should not be relegated to avail of the alternative remedy. Further, in **Dr. Bal Krishna Agarwal v. State of U.P. and others**[7] the Apex Court observed as under:

> *"Having regard to the aforesaid facts and circumstances, we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy under Section 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than five years. Since the question that is raised involves a pure question of law and even if the matter is referred to the Chancellor under Section 68 of the Act it is bound to be agitated in the court by the party aggrieved by the order of the Chancellor, we are of the view that this was not a case where the High Court should have non-suited the appellant on the ground of availability of an alternative remedy."*

[5] W.P.No.14398 of 2022 decided on 15.06.2022
[6] W.P.No.11272 of 2000 decided on 23.11.2023
[7] (1995) 1 Supreme Court Cases 614

13. The learned counsel for the revision petitioner further relied upon a decision in **Durga Enterprises (P) Limited and another v. Principal Secretary, Government of U.P. and others**[8] wherein the Apex Court observed that the High Court having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of relegating the parties to a civil suit. In **Popcorn Entertainment and another v. City Industrial Development Corporation and another**[9] the Apex Court observed as under:

> *"We have given our careful consideration to the rival submissions made by the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties."*

14. In **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others**[10] the Apex Court observed as under:

> *"15. Under Article 226 of the Constitution, the High Court having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

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[8] (2004) 13 Supreme Court Cases 665
[9] (2007) 9 Supreme Court Cases 593
[10] MANU/SC/0664/1998 (CA No.5201 of 1998) decided on 26.10.1998

15. In **Veerappa Pillai v. Raman and Raman Limited and others**[11] the Apex Court held as under:

> *"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made Mr. Daphtary, who appeared for the respondent, said nothing to controvert this position. His argument was that if all along the authorities and the Government had proceeded upon a particular footing and dealt with the rights of the parties on that basis, it was not open to them afterwards to change front and give the go by altogether to the conception of the rights of parties entertained by them till then. According to him, there was manifest injustice to his client in allowing them to do so and this was the reason which impelled the High Court to make the order which is the subject-matter of challenge in this appeal."*

16. In **State of Rajasthan and others v. Lord Northbrook and others**[12] the Honourable Supreme Court held as under:

> *"51. Under Article 226 of the Constitution of India, the High Court having regard to the facts of the case has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions; one of which is an effective and efficacious remedy available. When efficacious alternative remedy is available, the High Court would not normally exercise the jurisdiction. However, alternative remedy will not be a bar at least in three instances:-*
>
> *(i) where writ petition is filed for enforcement of any of the fundamental rights;*
> *(ii) where there is a violation of the fundamental right or principles of natural justice; and*
> *(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged; [vide Harbanslal Sahnia and Another v. Indian Oil Corpn. Ltd."*

17. In **Ibrat Faizan v. Omaxe Buildhome Private Limited**[13] the Honourable Supreme Court observed that against the order

[11] MANU/SC/0057/1952 (CA No.159 of 1951 decided on 17.03.1952)
[12] MANU/SC/1180/2019 (CA No.6677 of 2019 decided on 28.08.2019)

passed by the tribunal, the aggrieved party may approach the concerned High Court under Article 227 of the Constitution of India. It was further observed that the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National commission.

18. In **L. Chandra Kumar v. Union of India and others**[14] the Apex Court observed as under:

> *"We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High*

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[13] 2022 SCC Online SC 620
[14] (1997) 3 Supreme Court Cases 261

Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter."

19. There is no dispute that there is alternative statutory remedy available to the revision petitioner under Section 61 of the Insolvency and Bankruptcy Code, 2016 as rightly contended by the learned counsel for the respondent. But it is pertinent to note that the plea of maintainability of a case has to be taken at the earliest possible time. However, the present Civil Revision Petition was filed in the year 2020 and subsequently interim stay was granted. As observed by the Division Bench of this Court in **M/s. Regency Diaper Industries Limited case (supra)** once case is admitted and stay is granted, after a long lapse of time, the parties should not be relegated to avail of the alternative remedy. In M/s. Godrej Sara lee Limited v. The Excise and Taxation Officer - Cum - Assessing authority and others[15] the Apex Court observed as under:

"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The 4 power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and

[15] 2023 Live Law (SC) 70

has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy 5 is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, 6 writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

20. It is to be observed that the questions that are involved in the case on hand are based on facts as well as law. Thus, this Court is of the opinion that it is a fit case to entertain this Civil Revision Petition.

21. Now the question to be answered is whether the learned Tribunal has jurisdiction to direct respondent to produce the

original of alleged ledger statement dated 14.04.2017 and impose penalty under Section 65(1) of the Insolvency and Bankruptcy Code for malicious initiation and dismiss the company petition for malicious initiation.

22. Learned counsel for the revision petitioner submitted that Rule 131 of NCLT rules confers jurisdiction on NCLT to direct production of documents even in cases under Insolvency and Bankruptcy Code, 2016. In this regard, it is just and necessary to extract Rule 131 of National Company Law Tribunal Rules, 2016, which is as under:

> "131. Application for production of documents, form of summons.-
> (1) Except otherwise provided hereunder, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
> (2) An application for summons to produce documents shall be on plain paper setting out the document the production of which is sought, the relevancy of the document and in case where the production of a certified copy would serve the purpose, whether application was made to the proper officer and the result thereof.
> (3) A summons for production of documents in the custody of a public officer other than a court shall be in Form No. NCLT 15 and shall be addressed to the concerned Head of the Department or such other authority as may be specified by the Tribunal."

23. Thus, from the above provision of law, it is clear that the learned Tribunal has got jurisdiction to summon for production of document.

24. Now coming to the imposing of penalty under Section 65(1) of the Insolvency and Bankruptcy Code for fraudulent or malicious initiation of proceedings, the applicant/Corporate Debtor/revision petitioner is contending that based on the forged and fabricated Ledger Statement dated 14.04.2017, the respondent/operational creditor has initiated malicious proceedings. In this regard, the learned counsel for the revision petitioner has submitted copy of the FIR in Crime No.996 of 2023 of Raidurgam Police Station, which was registered against the respondent based on the private complaint lodged by the revision petitioner for the offence under Sections 465, 417 and 420 of the Indian Penal Code.

25. The learned counsel for the revision petitioner contended that the learned Tribunal passed the impugned order holding that it is beyond its jurisdiction to adjudicate the issue of forged document i.e., ledger statement dated 14.04.2017 relying on the decision of the NCLAT in **Shelendra Kumar Sharma v. DSC Limited**[16] wherein it was observed that so far as the question as to whether the documents are forged or not is concerned, it cannot be determined by the Adjudicating Authority (National

[16] Company Appeal (AT) (Insolvency) No. 1459 of 2019 decided on 16.12.2019

Company Law Tribunal) or this Appellate Tribunal and therefore, the Adjudicating Authority rightly not deliberated on such issue. The learned counsel for the respondent relied upon a decision of the Honourable Supreme Court in **Radha Export (India) Private Limited v. K.P. Jayaram and another**[17], wherein it was observed that disputes as to whether the signatures of the respondents are forged or whether records have been fabricated can be adjudicated upon evidence including forensic evidence in a regular suit and not in proceedings under Section 7 IBC.

25. At this juncture, it is appropriate to extract Section 65 of the Insolvency and Bankruptcy Code, 2016, which is as under:

> "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.
>
> [1][(3) If any person initiates the pre-packaged insolvency resolution process--

[17] (2020) 10 SCC 538

> (a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or
>
> (b) 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.]"

26. In **James Hotels Limited v. Punjab National Bank**[18] the learned Appellate Tribunal observed that fraudulent or malicious initiation of the proceedings and fraudulent bank trading can be looked into by Tribunal under Sections 65 and 66 of the I and B Code and that in any case, during the course of Insolvency Resolution Process, if allegation of fraud by one or other party is brought to the notice of the Adjudicating Authority, it is always open to the Adjudicating Authority to notice the appropriate authorities and parties to find out whether a prima facie is made out and the same has any effect in the resolution process or not.

27. In **Zaggle Prepaid Ocean Services Private Limited v. Freeble Solutions Private Limited**[19] the National Company Law Tribunal held as under:

> *"8. The important Question involved in this application is that the applicant/corporate debtor is challenging the invoices relied on by the respondent/operational creditor on the ground that they are fabricated or created or forged. It is also the case of the applicant/corporate debtor that there is also variation in the claim between the demand notice and the amount claimed in the*

[18] (2018) 93 taxmann.com 315 (NCL-AT)
[19] 2019 SCC Online NCLT 12268

petition. Here, the applicant/corporate debtor is challenging the discounts said to have been allowed by it. The contention of the applicant/corporate debtor is that the discount was allowed between 1% and 2% and it does not exceed beyond 2% at any time. Whereas, in some of the invoices filed by the respondent/operational creditor discount went up to 4%.

9. When a serious ground is raised by the applicant/corporate debtor about the veracity of the invoices and pointed out the undisputed fact that a criminal case was filed against the respondent/operational creditor, it has become necessary to direct the respondent/operational creditor to produce the original invoices for which claim is raised to enable the adjudicating authority to decide the dispute. The original invoices are in the custody of the respondent/operational creditor. There will not be difficulty for the operational creditor to produce the originals for inspection by the Tribunal as well as by the parties concerned for a just decision of the issue involved. It is, therefore, necessary to direct the respondent/operational creditor to produce the original invoices basing on which claim is made against the applicant/corporate debtor."

28. In **Embassy Property Developments Private Limited v. State of Karnataka & Others**[20], the Honourable Supreme Court after considering Section 65 and certain other provision of the Code held that the NCLT (Adjudicating Authority) and the NCLAT have jurisdiction to enquire into the allegations of fraud and fraudulent initiation of CIRP. In **Beacon Trusteeship Limited v. Earthcon Infracon Private Limited and another**[21], while deciding on the issue of whether the respondents therein had colluded and fraudulently gotten the CIRP initiated against the Corporate Debtor, the Honourable Supreme Court held that considering the provision of Section 65 of the Insolvency and Bankruptcy Code, 2016, it is necessary for the Adjudicating

[20] Civil Appeal No. 9170 of 2019 (@ Special Leave Petition (C) No. 22596 of 2019) decided on 03.12.2019
[21] CIVIL APPEAL No.7641/2019 decided on 18.02.2020

Authority in case such an allegation is raised to go into the same. Even the provision under Section 65 of the Code prescribes that if malicious or fraudulent proceedings are initiated, the Adjudicating Authority may impose upon such person a penalty. When the statute itself is empowering the learned Tribunal to adjudicate the dispute, certainly the learned Tribunal ought to have passed some reasoned order in adjudicating the dispute rather than closing the interlocutory application as not maintainable.

29. Thus, considering the principle laid down in the above said decisions, this Court is of the opinion that the Adjudicating Authority / learned Tribunal can enquire into the issue of fraud only under Section 65 of Insolvency and Bankruptcy Code, 2016 and the consequence of initiating a CIRP fraudulently will be limited to the monetary penalty provided for in Section 65 of Insolvency and Bankruptcy Code, 2016.

30. In view of the above facts and circumstances, this Court is of the opinion that though the learned Tribunal has jurisdiction to adjudicate the dispute, it failed to exercise jurisdiction vested in it and such failure to exercise such vested jurisdiction resulted in manifest injustice to the revision

petitioner and thereby, it is a fit case to interfere with the findings of the learned Tribunal.

31. Accordingly, the Civil Miscellaneous Appeal is disposed of by setting aside the Order dated 05.02.2020 in I.A.No.867 of 2019 in C.P.(IB).No.586/9/HDB/2019 passed by the learned National Company Law Tribunal, Hyderabad Branch, Hyderabad and the matter is remanded back to the learned Tribunal for considering the matter afresh by adhering to the principles of natural justice. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

Date: 12.02.2024
AS