

Deependra Singh Rathore vs Union Of India on 17 January, 2020

Bench: Uday Umesh Lalit, Vineet Saran

ITEM NO.8

COURT NO.6

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.28312/2019

(Arising out of impugned final judgment and order dated 15-07-2019 in DBCWP No.4960/2017 passed by the High Court Of Judicature For Rajasthan At Jaipur)

DEEPENDRA SINGH RATHORE & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION; and, IA No.184088/2019 – FOR PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 17-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s)

Mr. Suresh Kumar Sahni, Adv.
Mr. Siddharth Chaudhary, Adv.
Ms. Mansi Batra, Adv.
Mr. Jamshed Bey, Adv.
Mr. Ekansh Bansal, Adv.
Mr. Ajay Kumar Talesara, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

In Company Appeal (AT) (Insolvency) No.48 of 2017, following order was passed by the National Company Law Appellate Tribunal, (NCLAT), New Delhi on 17.07.2017:

“The case was earlier heard in part. Today, when the matter was taken up, learned

counsel for the appellant Reason: sought permission to withdraw the appeal to enable the petitioner to file appropriate application before the court of competent authority. Learned counsel appearing for the respondent has no objection to this. In the circumstance, we dismiss the appeal as withdrawn without any liberty to challenge this very impugned order before the Tribunal.” As the text of the order discloses, it was at the request of the learned counsel for the petitioner that permission to withdraw the appeal was granted by the NCLAT.

It appears that thereafter D.B. Civil Writ Petition No.4960 of 2017 was filed by the petitioner in the High Court of Judicature for Rajasthan, Bench at Jaipur with following prayers:

“(i) declare that the provisions of the Insolvency and Bankruptcy Code, 2016, particularly the scheme of Part-II more particularly section 7, 12, 16 to 31, 33 to 54 are ultra vires being in complete violation of Article 14, 19 and 21 of the Constitution of India.

(ii) declare that the provisions of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 are ultra vires being in complete violation of Article 14, 19 and 21 of the Constitution of India.

(iii) issue a writ of certiorari or any other appropriate writ/order/direction in the nature of certiorari quashing the order dated 31.03.2017 passed in Company Petition No.(IB) 23/PB/2017 whereby and where under the Ld. National Company Law Tribunal (NCLT) has inter alia admitted the application under section 7 of the Code and appointed an Interim Resolution Professional.

(iv) issue a writ of prohibition or any other appropriate writ/order/direction in the nature of a prohibition prohibiting the Ld. NCLT from proceeding any further on the application Company Petition No.(IB) 23/PB/2017.

(v) issue an appropriate writ/order/direction staying the effect and operation of the impugned judgment and order dated 31.03.2017 passed in Company Petition No.(IB) 23/PB/2017 by the Ld. NCLT.

(vi) issue an appropriate writ/order/direction restraining the respondent no.3 and the Interim Resolution Professional from acting in pursuance of the impugned judgment and order dated 31.03.2017 passed in Company Petition No.(IB) 23/PB/2017 by the Ld. NCLT.

(vii) Any other order which this Hon’ble Court may deem fit in the facts and circumstances of the present case may kindly be passed in favour of the petitioners.” The writ petition was dismissed by the High Court of Rajasthan relying upon the decision of this Court in *Innoventive Industries Ltd. v. ICICI Bank & Another*, (2018) 1 SCC 407.

The aforesaid view taken by the High Court is presently under challenge.

We have heard learned counsel for the petitioners.

We do not see any reason to interfere in the matter. The special leave petition is, accordingly, dismissed.

However, since the substantive challenge in the form of appeal before the NCLAT was withdrawn by the petitioner with a view to file the aforesaid Writ Petition, we give liberty to the petitioner to make an appropriate request before the NCLAT to have the appeal restored on the file of the NCLAT so that it can be disposed of purely on merits. Such request, if made, may be considered in accordance with law.

Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER