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

+ **CM(M) 3161/2024, CM APPL. 46385-46386/2024**

JET AIRWAYS INDIA LIMITED

.....Petitioner

Through: Ms. Ritu Singh Mann, Mr. Dheeraj K.
Garg and Mr. Sandeep Chauhan,
Advocates.

versus

NAVEEN RAI & ANR

.....Respondents

Through: Mr. Chandra Shekhar Mishra,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.09.2024

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1. The present writ petition impugns order dated 5th July, 2024¹, passed by the National Consumer Disputes Redressal Commission² in CC No. 101/2018³, whereby the Petitioner who was the opposite party in the proceedings, has been directed to file a copy of resolution plan as well as information memorandum before the commission. By way of the impugned order, the NCRDC has also called upon the authorised representative of the Monitoring Committee of the Petitioner Company to appear before them on the next date of hearing.

2. The factual background leading to such a direction in the impugned

¹ "Impugned order"

² "NCDRC"

³ Titled "Naveen Rai & Anr. vs. Jet Airways & Anr."



order, is the detailed order of NCDRC dated 22nd November, 2023, whereby the commission was seized with the adjudication of a legal conundrum in relation to the harmonious construction of the provisions of the Consumer Protection Act, 1986 and Section 238 of the Insolvency and Bankruptcy Code, 2016⁴. The said order is as follows:

“In the instant case, the complainants continue to elect and choose the present Forum only for the redressal of their grievances and therefore there are neither parallel proceedings opted by the complainants nor otherwise instituted by them so as to invoke the doctrine of election. What is being argued by the learned counsel for the other side is that if the complainants have failed to lodge the complaint before the IRP, the present complaint should be treated as barred as the claim stands extinguished by virtue of the approval of the resolution plan in the proceedings under the IB Code.

*The question is as to whether the IB Code legislation did intend to exclude all such claims and proceedings before all forums, including the Consumer Forum or not. The legislature under Section 238 of the IB Code has given a legislative mandate of an overriding effect over other enactments but the Apex Court in the case of **Ghansyam Mishra And Sons Pvt. Ltd. (Supra)** while proceeding to declare the law does not seem to have noticed the aforesaid judgments relating to the Consumer Protection Act in the case of Imperia Structures Ltd. (Supra) and the case of **Ireo Grace Realtech Pvt. Ltd. (Supra)** and even though they had been delivered prior to the judgment in the case of **Ghansyam Mishra And Sons Pvt. Ltd. (Supra)** which was decided on 13.04.2021.*

*The purpose of the Consumer Protection Act is to protect the interest of consumers given its mandate to examine "cases for deficiencies in service and unfair trade practices. This concept is a blanket protection given to the consumers whose rights are supposed to be secured and not defeated by any act on behalf of the service providers. The remedy for a consumer under the Consumer Protection Act, 1986 or for that matter under the Consumer Protection Act, 2019 can be availed of on special grounds of unfair trade practice or deficiency of service or both which conceptually is an altogether different channel to secure the interest of a consumer. By taking recourse to the provisions of IB Code and the orders passed therein, the question is can the present proceedings be closed on the ground of extinguishment of the claim. It is also to be seen as to whether the jurisdiction of the Consumer Forum gets curtailed or extinguished by virtue of the pronouncement in the case of **Ghansyam Mishra And Sons Pvt. Ltd. (Supra)** where the provisions*

⁴ “IBC”



of Consumer Protection Act, 1986 or Consumer Protection Act, 2019 were not in consideration.

Prima facie, a mandate through a declaration so as to prohibit the execution of a law or its implementation unless such law is either declared ultra vires or is declared to be inapplicable by a statutory force. May be debatable or may even not be possible. To construe an ouster of jurisdiction or even an implied bar would defeat a cause, as in the present case. It has therefore to be examined as to whether the rights of a consumer and the jurisdiction of the Consumer Forum under the Consumer Protection Act can be saved and preserved through a harmonious interpretation of Section 3 of the Consumer Protection Act, 1986 and the provisions of the IB Code.

Consequently, can the provisions of Section 238 of the IB Code 2016 prohibit the redressal of a claim as presently involved in the light of the fact that such a claim ought to have been or could have been staked by the claimant before the IRP during the moratorium period and the consequential approval of the resolution plan by the NCLT under the provisions of IB Code 2016. This question is being raised time and again and it is therefore necessary that learned counsel for the parties may assist the Bench on this issue for a resolution of this legal problem in the light of the provisions that can be invoked or compared with the provisions under reference and also with the aid of any judgments on that count.

Learned counsel for the parties pray that the matter may be adjourned to enable them to assist the Bench.

List on 05.01.2024.”

3. As is evident from the above extract, the NCDRC is currently seized with adjudicating the legal question of whether the provisions of Section 238 of the IBC prohibit the redressal of a claim under the Consumer Protection Act, 1986, in cases where such a claim was not staked by the complainant before the Insolvency Resolution Professional during the moratorium period and subsequently the proceedings under the IBC have attained finality with the consequential approval of the Resolution Plan by NCLT.
4. It is further noted that the NCDRC has also observed that this question is being raised time and again and therefore it is necessary for the counsels to assist the commission on this legal issue.
5. Keeping the aforementioned order of 22nd November, 2023 in mind, in the



opinion of the Court, the Petitioner should at the first instance urge their contentions urged in the present writ petition before the NCDRC. To this effect, in the opinion of the Court, if the National Commission has called upon the Petitioner to furnish a copy of the Resolution Plan as well as the information memorandum, it is only for the purpose of taking a final view in the matter. Therefore, this Court finds no infirmity in such a direction.

6. Furthermore, the direction of the NCDRC requiring the presence of the authorised representative of the monitoring committee before them, is merely for the purpose of assisting the commission for proper adjudication of the legal issue. Accordingly, the Court finds no infirmity in such a direction. If the authorised representative of the monitoring committee is held up in some other matter, they can always join the proceedings through the video conferencing mechanism, which the Court is informed, is available for proceedings before the NCDRC.

7. In light of the above, the Court finds no infirmity in the impugned order or a reason to entertain the present writ petition and accordingly, the same is dismissed along with pending application(s).

SANJEEV NARULA, J

SEPTEMBER 2, 2024

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