

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 9TH DAY OF MARCH 2023 / 18TH PHALGUNA, 1944

WP(C) NO. 6390 OF 2022

PETITIONER:

REJI SIVANKUTTY
VISHAKHATHIL, OLAKETTIAMBALAM P. O., MAVELIKKARA,
ALAPPUZHA DISTRICT, KERALA - 690 510.
(PROPRIETOR OF PICKY ASSIST).

BY ADVS.
ANIL D. NAIR
TELMA RAJU
EDATHARA VINEETA KRISHNAN
ARAVIND SREEKUMAR

RESPONDENT:

- 1 STATE BANK OF INDIA
PEROORKADA BRANCH, TRIVANDRUM, KERALA - 695 005,
REPRESENTED BY ITS BRANCH MANAGER.
- 2 SHAWN JEFF CHRISTOPHER
IBBI/IPA-001/IP-P-01617/2019-2020/12711, LIQUIDATOR OF
ACHARYA TECHNO SOLUTIONS (INDIA) PRIVATE LIMITED, JVR
ASSOCIATES, CHARTERED ACCOUNTS, WILMONT PARK BUSINESS
CENTRE, PALLIMUKKU, KOCHI, ERNAKULAM, KERALA - 682 016.

BY ADVS.
SANTHOSH MATHEW
NIDHI JACOB
SUKUMAR NAINAN OOMMEN(K/5/2009)
SHERRY SAMUEL OOMMEN(K/1143/2012)
NITISH SATHESH SHENOY(K/001663/2019)

OTHER PRESENT:

SC FOR SBI M.JITESH MENON

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.10.2022, THE COURT ON 09.03.2023 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 9th day of March, 2023

The petitioner is the Director of a Company by name Acharya Techno Solutions (India) Private Limited, which is facing corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC for short). On commencement of the corporate insolvency resolution process, the National Company Law Tribunal, Kochi Bench, ('NCLT' for short) issued an order dated 13.09.2019 suspending the powers of the Board of Directors of the Company. Later vide order dated 19.02.2020, liquidation process against the Company commenced and the second respondent was appointed as the Liquidator.

2. After verification of the Company's accounts, the second respondent filed an application before the NCLT, pointing out that the Company had repaid loan amount of Rs.42,50,397/- to the petitioner, in preference to the trade

payables, statutory dues and salaries due to the staff during the year 2017-18. As per Ext. P1 order dated 21.12.2021, the NCLT held the repayment of loan to the petitioner to be a 'preferential transaction' in terms of the IBC and directed the petitioner to return the amount to the Liquidator within two weeks. The Tribunal also directed the Liquidator to take immediate steps for recovering the amount from the suspended Managing Director/Director and to submit a report. Aggrieved by Ext.P1 order, the petitioner preferred Ext.P2 appeal and Ext.P3 stay petition before the National Company Law Appellate Tribunal ('NCLAT' for short). While so, finding that the direction in Ext.P1, to take immediate steps to recover the amount from the petitioner and submit report was not complied by the Liquidator, the NCLT passed a further order on 17.01.2022 directing the Liquidator to initiate appropriate legal proceedings for recovery of the amount. This was followed by another order dated 24.01.2022 requiring the Liquidator to file a report with regard to the legal proceedings initiated. Thereupon, the Liquidator issued a mail to the State Bank of India, where the petitioner is having a current account in the

name of his concern by name 'Picky Assist' requesting to freeze that account and transfer the balance to the Liquidator's account. The Bank acted in terms of the Liquidator's request and sent an SMS to the petitioner informing him about the freezing of operations of account in the name of 'Picky Assist'. The writ petition is filed challenging the Liquidator's authority to direct freezing of petitioner's account.

2. Elaborate contentions were advanced by Adv. Anil D. Nair appearing for the petitioner, Adv. Nitish Satish Shenoy for the second respondent and Adv. Santhosh Mathew for the first respondent Bank.

3. Adv. Anil D. Nair contended that no provision under the IBC, or the Rules and Regulations thereunder, confers the Liquidator with the power to freeze the account of the Director of a Company that is facing insolvency proceedings. As per prescribed procedure, the Liquidator should file an application for execution under Rule 56 of the National Company Law Tribunal Rules, 2016. Thereupon, the NCLT can, in terms of Rule 57 and after issuing process for execution and hearing objections, order attachment or issue recovery warrant in the

form, as provided in the Code of Civil Procedure. It is also contended that the entire proceedings, leading up to the freezing of the petitioner's account, were done without affording an opportunity of hearing to the petitioner.

4. Adv. Nitish Satish Shenoy, raised a preliminary objection as to the maintainability of the writ petition in view of efficacious alternative remedy of appeal before the NCLAT, against the proceedings and orders of the NCLT. It is pointed out that the petitioner has resorted to such remedy by filing Ext.P2 appeal. Even though petitioner filed Ext.P3 stay application in the appeal, interim order was not granted by the NCLAT, as evident from Ext. R2(c) proceedings dated 17.03.2022. It is contended that, on merits also the writ petition is not maintainable in view of Ext. R2(e) proceedings of the NCLT, wherein taking note of the petitioner's failure to comply with Exts. P1 and P2 orders, the NCLT directed the Banks, including the first respondent, State Bank of India, to freeze the accounts operated by the petitioner. It is submitted that the petitioner having failed to bring these vital facts to the notice of this Court, the writ petition is liable to be

dismissed on that ground also. On merits, it is contended that the Liquidator is conferred with enough power to take measures for protecting and preserving the assets, including recovery of amounts due to the corporate debtor and if the petitioner's argument is accepted, the powers of the Liquidator would be rendered nugatory.

5. Adv. Santhosh Mathew submitted that, on receipt of request from the Liquidator to freeze the account of the petitioner's concern, a query was raised and the account was kept on hold only after ensuring that the request was legal. The said action was taken in accordance with the Standard Operating Procedure of the Bank. The account was frozen, based on a subsequent order (Ext. R2(e)) of the NCLT.

7. The legal position as to the limited scope of interference in matters pending before the NCLT is no longer *res integra* in view of the decisions of the Supreme Court in **Swiss Ribbons (P) Ltd v. Union of India** [(2019) 4 SCC 17] and **Ghanashyam Mishra and Sons. Pvt. Ltd. v. Union of India** (2021 SCC OnLine SC 313). In those decisions, the Apex Court declared that IBC, 2016 being a self contained

Code, the High Courts should refrain from interfering with the resolution process. Moreover, having resorted to the alternative remedy, the petitioner cannot collaterally challenge the same order through a writ petition. In any case, the dispute as to the authority of the Liquidator to enforce the order of NCLT has lost its relevance as per Ext.R2(e), the NCLT itself has passed the order freezing the petitioner's account.

The writ petition is hence dismissed, without prejudice to the petitioner's right to pursue his remedy before the NCLT or NCLAT, as the case may be.

Sd/-

V.G.ARUN

JUDGE

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APPENDIX OF WP(C) 6390/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE ORDER DATED 21.12.2021 OF THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL IN IA (IBC)/51 (KOB)/2021 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019.
Exhibit P2	TRUE COPY OF THE APPEAL PREFERRED BEFORE THE HON'BLE NATIONAL COMPANY LAW APPELLATE TRIBUNAL.
Exhibit P3	TRUE COPY OF THE APPLICATION FOR STAY PREFERRED BEFORE THE HON'BLE NATIONAL COMPANY LAW APPELLATE TRIBUNAL.
Exhibit P4	TRUE COPY OF THE SCREENSHOT OF THE E-FILING PORTAL OF THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL EVIDENCING THE FILING AND NUMBERING OF THE APPEAL AND APPLICATION FOR STAY.
Exhibit P5	TRUE COPY OF THE ORDER OF THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL DATED 17.01.2022.
Exhibit P6	TRUE COPY OF THE ORDER OF THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL DATED 24.01.2022.
Exhibit P7	TRUE COPY OF THE ORDER OF THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL DATED 14.02.2022.
Exhibit P8	TRUE COPY OF THE SCREENSHOT OF THE MESSAGE RECEIVED BY THE PETITIONER FROM THE 1ST RESPONDENT.
Exhibit P9	TRUE COPY OF THE LETTER DATED 18.02.2022 ISSUED BY THE PETITIONER FROM THE 1ST RESPONDENT.
Exhibit P10	TRUE COPY OF THE LEGAL NOTICE DATED 18.02.2022 ISSUED BY THE LAWYER ON BEHALF OF THE PETITIONER TO THE 1ST RESPONDENT.

RESPONDENT EXHIBITS

Exhibit R2(A)	TRUE COPY OF THE ORDER DATED 19.02.2020 IN MA/05/KOB/2020 IN TIBA/1/KOB/2019 BY THE HON'BLE NCLT
Exhibit R2(B)	TRUE COPY OF THE NOTICE DATED 28.12.2021 SENT BY THE 2ND RESPONDENT.
Exhibit R2(C)	TRUE COPY OF THE ORDER OF THE HON'BLE NCLAT DATED 17.03.2022.
Exhibit R2(D)	A TRUE COPY OF THE INTERLOCUTORY APPLICATION BEARING NO. IA(IBC)/38/KOB/2022.
Exhibit R2(E)	A TRUE COPY OF THE ORDER OF THE HON'BLE NCLT DATED 24.02.2022