

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 117 of 2024

**Culver Max Entertainment Private Limited
formerly known as
Sony Pictures Networks India Ltd.**

Vs.

National Company Law Tribunal & Ors.

For the petitioner	:	Mr. Jatinder Singh Dhatt, Adv.
For the respondent no. 3 :		Mr. Ratnanko Banerje, Sr. Adv., Ms. Swapna Choubey, Adv., Mr. Kanishka Kejriwal, Adv., Ms. Ashika Daga, Adv., Mr. Aayush Lakhotia, Adv.
For the Liquidator of Manthan Broadband	:	Mr. Jayanta Sengupta, Adv., Mr. Rahul Auddy, Adv., Mr. Aditya Goopta, Adv.
For the suspended Directors	:	Mr. Shakya Singha Sen, Adv.
Hearing concluded on	:	11.03.2024
Judgment on	:	19.03.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner, being one of the secured creditors of the Manthan Braodband Services Pvt. Ltd., a Corporate Debtor, has preferred the instant writ petition against an order dated January 12, 2024 passed by the National Company Law Tribunal (NCLT). By the said order, it was observed that Alliance Broadband Services Pvt. Ltd. (respondent no. 3), another secured creditor at whose behest a Corporate Insolvency Resolution Process (CIRP) commenced which subsequently culminated in liquidation proceedings being initiated on April 6, 2022,

had evidently and admittedly failed in its intention to realize its security interest and thereby having failed to discharge its obligation under Regulation 21-A, cannot be permitted to retain the shares held as security. Thus, respondent no. 3 was directed to hand over the share certificates in original to the Liquidator within a week from the date of pronouncement of the order.

2. Other applications were also disposed of by the same order.
3. The primary grievance of the petitioner is that the NCLT ought to have decided the Liquidator's application under Section 25 of the Insolvency and Bankruptcy Code (IBC), 2016 prior to deciding the application under Regulation 21-A of the IBBI (Liquidation Process) Regulations, 2016 (hereinafter referred to as, "the 2016 Regulation").
4. It is argued that by the observations as mentioned above, Alliance was given the status of a Secured Creditor with regard to certain shares of the Corporate Debtor (CD). Such shares of respondent no. 3-Alliance were owned by the CD. According to respondent no. 3-Alliance, those were again pledged with Alliance itself by the CD as security of a subsequent loan. Thus, Alliance stakes a claim to the said shares.
5. It is argued by the petitioner that Alliance is not the owner or does not have any security interest in the shares but, by virtue of the impugned order, gets a ratification of its claim on such count without the issue being adjudicated at all.
6. Thus, insofar as such declaration of Alliance being a Secured Creditor with regard to the pledged shares is concerned, the impugned order is devoid of reasons and is thus, vitiated.

- 7.** It is argued that the NCLT has acted without jurisdiction in relying upon Regulation 21-A to direct Alliance to return the equity shares. It is apprehended by the petitioner that by such direction, Alliance has been declared as a Secured Creditor and will supersede the petitioner (for short, “Sony”) in the distribution mechanism contemplated under Section 53 of the IBC, thereby adversely prejudicing Sony, the petitioner.
- 8.** The lack of reasoning in the impugned order regarding such declaration is violative of the principles of natural justice and is arbitrary, for which a writ petition lies.
- 9.** It is also argued by the petitioner that the utter lack of reasoning in the impugned order makes it amenable to the writ jurisdiction. Hence, the petitioner does not have any effective right of appeal before the National Company Law Appellate Tribunal (NCLAT).
- 10.** It is further argued that Sony, the petitioner, was not a party before the NCLT and the impugned order was passed behind the back of the petitioner, affecting the rights of the petitioner.
- 11.** Although a recall application in respect of the order was filed by the petitioner, it is argued that the same operates on a different footing than the present challenge inasmuch as the powers of the NCLT of recall of its order is limited, primarily to technical, clerical and arithmetical errors.
- 12.** Learned counsel for the petitioners also hints at collusion between the Liquidator and Alliance on such count.
- 13.** It is argued that the Stakeholders’ Consultation Committee (SCC) was not consulted before passing the impugned direction of sale of the

assets and issuing the direction that the shares of Manthan allegedly pledged with Alliance were to be part of the liquidation estate. Thus, Regulation 31-A of the 2016 Regulations was violated.

- 14.** Learned counsel for the petitioner argues that in the pending application under Section 25 of the IBC, a relief was sought for declaring the shares-in-question as illegally captured by Alliance. Without listing the same on the date of passing of the impugned order, the application filed by the Liquidator to approve the sale, bearing IA No. 427 of 2023, was listed along with the application filed by the Suspended Board of Directors of the CD bearing IA No. 334 of 2023 for setting aside the collusive sale of shares on old valuation at a lower price.
- 15.** Under Section 36 of the IBC, it is argued, the Liquidator is supposed to act in fiduciary capacity vis-à-vis the stakeholders, due to which the petitioner remained under the misconception that its interest would be sufficiently protected and did not apply for being impleaded in the proceeding.
- 16.** By the impugned order, it is argued, the interest of the stakeholders and other secured creditors, including the petitioner, was directly affected.
- 17.** It is argued that Alliance is supposed to return the shares under Section 25 of the IBC or under Regulation 21-A of the 2016 Regulations, as a Secured Creditor is entitled to be placed at the top of the list under Section 53 of the IBC.
- 18.** Learned counsel argues that the impugned order entitles Alliance to return the shares as per Regulation 21-A of the 2016 Regulations

instead of Section 25 of the IBC, thus, indirectly categorizing Alliance as a Secured Creditor and placing it at the top of the distribution list under Section 53 of the IBC.

- 19.** Learned senior counsel appearing for Alliance contends that the writ petition is not maintainable in view of the availability of an equally efficacious alternative remedy by way of an appeal under Section 61 of the IBC. It is further argued that the petitioner, having already filed an application for recall of the same order, cannot challenge it in the writ jurisdiction of this Court. In fact, the petitioner pressed for orders from the NCLT on March 6, 2024 in connection with the recall application despite this Court having concluded hearing on March 5, 2024.
- 20.** It is argued that the Suspended Board of Directors of the CD has already filed an appeal before the NCLAT against the self-same impugned order, which is still pending. Thus, the present writ petition takes the number of challenges to the self-same order to three, before different fora.
- 21.** It is argued that respondent no. 3-Alliance filed the insolvency petition under Section 7 of the IBC in the capacity of Secured Financial Creditor of the CD, giving rise to CP(IB)/1634/KB/2018 in the month of December, 2018. In March, 2019, Alliance also filed a civil suit being CS No. 54 of 2019 *inter alia* seeking declaration of pledge in respect of the pledged equity shares of Alliance, which were pledged by the CD to Alliance itself. A declaration was also sought by Alliance in the suit that it is entitled to sell the shares towards satisfaction of its claim against the CD.

- 22.** The insolvency petition was admitted on September 18, 2019 and upon failure of the resolution process the Committee of Creditors (CoC) of the CD decided to liquidate the CD (Manthan) at the CoC meeting held on March 8, 2021, upon which the NCLT directed liquidation by its order dated April 6, 2022. The promoters and suspended Directors of Manthan have also challenged the liquidation order before the NCLAT which was dismissed by an order dated September 20, 2022. The said order was challenged before the Supreme Court which was also dismissed on February 3, 2023.
- 23.** By order dated February 14, 2023, the NCLT directed that e-auction sale of the assets of Manthan be proceeded with; however, consequential action in the sale was to be conducted only with liberty of the NCLT.
- 24.** Learned senior counsel appearing for respondent no. 3-Alliance submits that under Regulation 21-A, any unenforced security interest would automatically become part of the liquidation estate of the CD. Thus, since Alliance failed to exercise any security interest over the equity shares within 30 days from liquidation commencement date, the shares became part of the liquidation estate. Hence, the NCLT rightly relied on Regulation 21-A on the submission of the Liquidator.
- 25.** The petitioner, it is argued, shall not be prejudiced in any manner by the impugned order, since Alliance is admittedly a Secured Creditor and filed its claim with the Liquidator in Form-D for Rs. 14,47,32,521/-, also indicating that it shall not relinquish the security interest held in respect of 77,500 equity shares and land at

Tajpur. The financial claim together with security interest is confirmed by the Record of Default/Debt issued by NeSL.

- 26.** In its recall application, the petitioner had admitted that Alliance was accepted as Secured Creditor to the tune of Rs. 26 lakh only. In fact, the Liquidator had admitted in his affidavit before the NCLT that Alliance is a secured creditor to the extent of Rs. 23 lakh. The suspended Directors of Manthan have also admitted before the NCLT that Rs. 25 lakh is outstanding on account of interest under agreement for loan against the shares, which are the subject-matter of the writ petition, with Alliance. From the SCC minutes, it can be seen that the petitioner is in the process of realizing the proceeds from sale of its security interest over an asset of the CD. Learned senior counsel relies on Section 52(4) which empowers a secured creditor to enforce, realize or deal with the secured assets in accordance with applicable law and to apply the proceeds to recover the debts due to it. Where the proceeds of realization of secured assets are not adequate to repay debts owed to the secured creditor, under Section 52(9) of the IBC, it shall be paid by the Liquidator in the manner specified in Section 53(1)(e).
- 27.** Section 53(1) provides the priority of creditors who are entitled to distribution of liquidation proceeds. Under sub-clause (b)(ii) of the said Section, debts owed to a Secured Creditor in the event such creditor had relinquished security is mentioned. A composite reading of sub-clauses (d) and (e)(ii) indicates that the petitioner shall come under Section 53(1)(e)(ii) of the IBC which is below the category of Alliance whether as secured or unsecured financial creditor as per

Section 53(1), sub-clauses (b)(ii) and (d). Hence, the impugned order does not affect the position of Sony vis-à-vis the admitted position of Alliance under Section 53.

- 28.** No consultation is required with the SCC before selling assets the CD. The liquidation process is time-bound, it is argued. Under Regulation 31-A, the Liquidator is required to place before the SCC only the recommendation of sale of the CD as a going concern to take advice which is not binding.
- 29.** Learned senior counsel highlights the objection as to maintainability by placing reliance on *Indian Oil Corporation Limited Vs. Union of India and others*, reported at 2019 SCC OnLine Del 11911, where a Division Bench of the Delhi High Court held that in view of a statutory appeal under Section 61, unless special or extraordinary circumstances are made out, a writ petition is not maintainable.
- 30.** It is argued that the judgments relied on by the petitioner are not relevant.
- 31.** Learned counsel for the respondent no. 2/Liquidator argues that the dispute pertaining to security interest of respondent no. 3 in connection with the company in liquidation relates to 77,500 equity shares of respondent no. 3, having been subscribed and owned by respondent no. 2 which were pledged in favour of respondent no. 3 against a loan advanced by respondent no. 3 to the company in liquidation to the tune of Rs. 10.20Cr.
- 32.** The Liquidator argues in relation to the said security interest that the loan has been repaid in full to the respondent no. 3 whereas respondent no. 3 contends that a sum of Rs. 26 Lakh remained due

and payable on account of the loan. During the interregnum, respondent no. 3 contends to have advanced a further loan of Rs. 10Cr. to the company (in liquidation) for which the purported pledge of 77,500 shares is still subsisting. Alliance had instituted a suit for declaration of such pledge, which is pending. Subsequently, the company went into liquidation upon failure of the Corporate Insolvency Resolution Process. The Liquidator is contesting the suit on the ground that the loan in respect of the said equity shares has been repaid in full and the pledge is not subsisting.

- 33.** The Liquidator also took out an application bearing IA (IBC)/386(KB) 2021 seeking handing over of the said 77,500 equity shares of the CD held in respondent no. 3 that were pledged to respondent no. 3.
- 34.** Be that as it may, Alliance, contending that it is a Secured Creditor, had filed Form-D in terms of Regulation 21-A for the purpose of retaining its security interest over the said 77,500 equity shares so that the same can be deemed to be outside the liquidation estate. However, respondent no. 2 refused to recognize Alliance as a Secured Creditor in view of pendency of IA (IBC)/386 (KB) 2021. Thus, the issue pertaining to a valid pledge subsisting in favour of Alliance in respect of 77,500 equity shares remains to be adjudicated in CS No. 54 of 2019.
- 35.** In the above facts and circumstances, the Liquidator's contention before the NCLT was specifically to the extent that the issue relating to the security interest of respondent no. 3 forms the subject-matter of dispute which is pending adjudication, for which the alleged security interest forms a part of the liquidation estate.

- 36.** Moreover, the Liquidator, being governed by the statutory mandate of completing the liquidation process in a time-bound manner, has published the Sale Memorandum for the auction sale to be conducted in respect of the shares along with the requisite disclosure on the subject.
- 37.** Thus, the impugned order was passed directing the sale of the said shares and the requisite disclosure was also given by the Liquidator in the Sale Memorandum for auction, citing pendency of the proceedings relating to the title to the alleged pledge of shares.
- 38.** In the light of the above observations, learned counsel for the Liquidator submits that the writ petition is not maintainable in view of the availability of an appeal against the impugned order.
- 39.** In any event, the writ petitioner is a non-party to the subject-applications, for which there is no bar to the petitioner to prefer an appeal even as a non-party. The Liquidator relies upon the judgment of the Supreme Court in *State of Andhra Pradesh and others Vs. S. Pitchi Reddy*, reported at (2022) 2 SCC 569 on such score.
- 40.** Moreover, the present disputes involve complex questions of fact and law and there is no non-compliance of the principle of natural justice.
- 41.** It is relevant to mention here that on the issue of maintainability, the petitioner cites *M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.*, reported at 2023 INSC 92.
- 42.** On the absence of reason, the petitioner cites *Kranti Associates Pvt. Ltd. and Ors. Vs. Masood Ahmed Khan and Ors.*, reported at (2010) 9 SCC 496 and *Excel Powmen Ltd. Vs. Union of India and Ors.*, reported

at (2020) 210 AIR 798 and *U.P.S.R.T.C Vs. Jagdish Prasad Gupta*, reported at AIR 2009 SC 2328.

43. Before going into the merits of the matter, the issue of maintainability is taken up for hearing. It is well-settled, as also borne out by the judgments cited by the petitioner, that availability of an appeal is not an absolute bar in the event fundamental rights of a person are affected by the action or decision of a public authority and in cases where there is an arbitrariness, *mala fides* or palpably illegality or assumption of jurisdiction of any authority. In the present case, the petitioner alleges that there was palpable violation of law and natural justice insofar as no reasons were attributed for holding Alliance (respondent no. 3) to be a Secured Creditor. The petitioner seeks to argue that an appeal would be illusory, in view of the petitioner not raising a factual issue but raising a question of violation of natural justice due to utter lack of reasons.
44. Even otherwise, if the petitioner chose only to challenge certain findings of an order of the NCLT, it might have been argued that no appeal lies. Normally, the writ court exercises its self-imposed restriction in not interfering where alternative remedy is provided adequately.
45. There is no doubt that the impugned order is an order coming within the purview of Section 61 of the IBC which provides for an appeal. The appeal is not restricted to parties to the proceeding before the NCLT but anybody aggrieved can take leave of the NCLAT and prefer such an appeal.

- 46.** Thus, under normal circumstances, the petitioner's appropriate remedy would be in appeal. The limited scope of consideration is, thus, whether the impugned order is vitiated for lack of reasons. The inter-play of certain provisions of law is required to be looked into for such purpose.
- 47.** Whereas Section 25 of the IBC imposes a duty on the Resolution Professional (in the present case the Liquidator) to preserve and protect the assets of the Corporate Debtor, sub-section (2)(a) empowers the said professional to take immediate custody and control of all the assets of the Corporate Debtor.
- 48.** In the present case, there is a dispute as to the entitlement of Alliance (respondent no. 3) to the 77,500 equity shares of the CD which were pledged with Alliance.
- 49.** The Liquidator himself disputes the interest of Alliance in the said shares.
- 50.** In such context, the provisions of Regulation 21-A of the 2016 Regulations are to be examined. Clause (1) of the same provides that a Secured Creditor shall inform the Liquidator of its decision to relinquish its security interest to the liquidation estate or realize its security interest as the case may be. Alliance has filed a Form-D application expressing its interest to realize its security interest. The Liquidator, upon expiry of 30 days from the liquidation commencement, Alliance having not intimated its decision, filed the application under Regulation 21-A for presuming the assets covered under the security interest to be part of the liquidation estate.

- 51.** Thus, irrespective of the claim of Alliance to the pledged shares being sub judice in a separate suit, the fact remains that the effect of the order under Regulation 21-A is that the assets covered under the security interest that is the said shares, are presumed to be part of the liquidation estate.
- 52.** Hence, it is Alliance which could be aggrieved by the said order, as Alliance had initially expressed its decision to relinquish its security interest which did not fructify in view of the assets being presumed to be part of the liquidation estate.
- 53.** There is no quarrel with the fact that Alliance has been treated as a Secured Creditor for the purpose the CIRP as well as the liquidation process. The question is only regarding its interest in the pledged shares of the CD, which are 77,500 in number.
- 54.** By virtue of the order passed under Regulation 21-A treating the assets covered under the alleged security interest of Alliance (the shares-in-question) to be part of the liquidation estate, the interest of the secured creditors, be it the petitioner or others, cannot be adversely affected in any manner; rather, such order can only enure to the benefit of the secured creditors. The effect of the order is that, despite the claim of security interest of Alliance in the said shares, those are made a part of the liquidation assets, thereby subjecting the sale proceeds obtained after sale of such shares to the rigours of Section 53 of the IBC. Section 53 provides the order of priority for distribution of the proceeds from the sale of the liquidation assets. If the shares are treated to be liquidation assets and are sold as such, the proceeds from the said sale will be a part of the hotchpot of the

liquidation assets and will be distributed in terms of Section 53 where the secured creditors will get their dues in accordance with the order of priority stipulated therein. The petitioner claims to be a secured creditor and, hence, could only be benefited, and not suffered, from the order under Regulation 21-A.

- 55.** In fact, I do not find any irregularity in the order impugned herein. Since the Liquidator's repeated efforts directing Alliance to hand over its shares failed, Section 25 of the IBC has been rendered academic. Section 25, it is to be noted, does not envisage any adjudication of the rights of a secured creditor to any of the assets. Only if a secured creditor in the liquidation proceedings realizes its security interest in the manner specified in section 52 of the IBC, under sub-section (1)(b) of the said Section, he shall inform the Liquidator of such security interest and identify the assets subject to such security interest to be realized, as per the provisions of sub-section (2) of Section 52. Only in such a case, under Section 52(3), the Liquidator shall verify such security interest before it is realized by the Secured Creditor under the said Section and permit the Secured Creditor to realize only such security interest, the existence of which may be proved either by the records of such security interest maintained by an information utility or by such other means as may specified by the Board.
- 56.** Hence, the scope of an adjudication of the security interest during a liquidation process is provided only in Section 52(3). If Alliance had succeeded in having its way under Section 52(1)(a), it would not be the bounden duty of the Liquidator to adjudicate on the said rights under sub-section (3) of Section 52. However, since such bid of Alliance has

failed by way of the impugned order under Regulation 21-A, presuming the shares-in-question to be a part of the liquidation asset and directing sale thereof, there cannot arise any question of such adjudication, since, in any event, the shares become a part of the liquidation estate, sufficiently subserving the interest of all secured creditors, including the petitioner (who claims to be a secured creditor), who would be getting their dues in order of priority under Section 53 of the IBC.

- 57.** Thus, the petitioner cannot claim to have been aggrieved in any manner, as the order passed under Regulation 21-A did not adjudicate on the rights of Alliance in respect of security interest to the disputed shares. Rather, the Liquidator has rightly submitted that the said shares would be shown in the auction sale to be subject to the pending suit.
- 58.** In the light of the above observations, there is no scope of interference by the writ court with the order impugned herein.
- 59.** In fact, the limited window of interference under Article 226 has not been substantiated by the petitioner for the writ court to interfere, since there is no arbitrariness, *mala fides* and/or palpably illegality in the impugned order.
- 60.** The argument of the petitioner that the order is devoid of reasons is entirely misplaced. In the absence of any adjudication on the issue of Alliance's rights to the pledged shares, there arises no question of any reason being provided for such non-existent adjudication.
- 61.** In such view of the matter, there is no scope of interference in the present writ petition.

62. Accordingly, WPO No. 117 of 2024 is dismissed on contest without any order as to costs.
63. However, nothing in this order shall preclude the petitioner from preferring an appeal before the NCLAT against the impugned order in due process of law. If so filed, the NCLAT shall proceed with the same in accordance with law, without being influenced on merits by any of the observations made herein.
64. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)