



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

LPA No.92 of 2022
Reserved on: 21.11.2023
Pronounced on:01.12.2023

Lalan Kumar Singh

.....Appellant

Versus

The Hongkong and Shanghai Banking
Corporation Limited & Others

...Respondents

Coram:

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.
Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?

For the appellant : Mr. R.K. Bawa, Sr. Advocate with Mr.
Jeevesh Sharma, Advocate.

For the respondents : Mr. Neeraj Gupta, Sr. Advocate with Ms.
Rinki Kashmiri, Advocate, for respondent
no.1

Mr. Manish Jain, Mr. Paras Dhaulta, Mr.
Manan Jain & Mr. Sidhant Jain, Advocates,
for respondent no.2.

None for respondent no.3.

Ms. Divya Sharma & Mr. Janmajai
Chauhan, Advocates, for respondent no.4.

M.S. Ramachandra Rao, Chief Justice

This Letters Patent Appeal is preferred by the appellant, challenging the order dt. 23.08.2021 passed by the learned Single Judge in CWP no.2588 of 2018.

- 2) He had filed the said Writ petition in his capacity of the then Executive Director of M/s GPI Textiles Limited (4th respondent).

Background facts

CWP no.648 of 2018 and events during the filing of the said CWP

- 3) The appellant had earlier filed CWP no.648 of 2018 in this Court seeking certain reliefs against the Hongkong and Shanghai Banking Corporation Limited (respondent no.1) & M/s Phoenix ARC Private Limited (respondent no.2) and had impleaded the Reserve Bank of India (in short "*the RBI*") as a 3rd respondent therein.
- 4) In the said CWP, he had sought certain actions to be taken against the respondents no.1 & 2 by filing a complaint to the RBI, to which the RBI had sent a reply on 18.05.2018, asking for comments of the 1st respondent.
- 5) During the pendency of the said Writ petition, the Assistant Solicitor General of India appearing for the RBI had made a statement that

action on the basis of the complaint of the Company, cognizance of which already stands taken on 18.05.2018, would positively be taken to its logical end within two months.

- 6) Thereafter the said Writ petition was withdrawn in view of the said statement of the Assistant Solicitor General of India, reserving liberty to the Company to independently pursue the remedies.

The subsequent CWP No.2588 of 2018

- 7) After the CWP No.648 of 2018 was disposed off, the appellant waited for two months, and when he did not get any response from the RBI, he got issued Annexure P-4 Notice to the RBI alleging non-compliance of the statement made on its behalf during the pendency of Writ petition.
- 8) He then filed CWP No.2588 of 2018 and sought a direction to the RBI to comply with the statement made on 13.06.2018 during the pendency of CWP no.648 of 2018, promising to take action against respondents no.1 & 2, in a time bound manner.

Other related events

- 9) It is not in dispute that the 2nd respondent had filed an application under Section 7 of the Insolvency and Bankruptcy Code (in short "*the IBC*"), 2016 against the 4th respondent-Company for initiating

Corporate Insolvency Resolution process and the Adjudicating Authority (NCLT, Chandigarh Bench) had passed an order on 06.07.2018, admitting the application.

- 10) The appellant herein, in his capacity as Executive Director and Share Holder of the said 4th respondent-Company, had preferred Company Appeal (AT) (Insolvency) No.485 of 2018 before the National Company Law Appellate Tribunal (in short "*the NCLAT*"), New Delhi, but the said appeal was dismissed on 20.12.2018 holding that the 4th respondent itself had written a letter on 19.03.2018 of its own agreeing for assignment of its debt by the 1st respondent to the 2nd respondent, and so the appellant cannot raise allegations of *mala fide* against the 1st respondent or allege that the assignment of the debt is illegal.
- 11) The appellant challenged the order of the NCLAT before the Supreme Court in Civil Appeal no.1927 of 2019, but even the said appeal was dismissed on 08.03.2019, granting liberty to the appellant to raise all points before the NCLAT.
- 12) Subsequently, a Review petition was filed by the 2nd respondent before the Supreme Court, being Review Petition(C) no.687 of 2020 contending that the liberty granted to the appellant was being

misused by him and so, the order passed by the Supreme Court on 08.03.2019, be modified.

- 13) The Supreme Court on 02.03.2021, after hearing the counsel for the parties, disposed off the Review petition holding that it is not open to the appellant to agitate the issues which were already settled while dismissing CA no.1927 of 2019 filed by him; and so, the order dt. 06.07.2018 passed by the National Company Law Tribunal (in short "*the NCLT*"), Chandigarh Bench and the order dt. 20.12.2018 passed by the NCLAT, New Delhi having been upheld, the issue of admission of the Corporate Insolvency Resolution Application, cannot now be reopened.
- 14) Thereafter, the Interim Resolution Professional (IRP) of the 4th respondent filed application IA No.452/2023 before the NCLT, Chandigarh Bench, under Section 30(6) read with Section 31(1) of the IBC, 2016, seeking approval of the Resolution Plan in respect of the 4th respondent.
- 15) The said application was allowed by the NCLT on 27.04.2023 and approval was accorded by it to the Resolution Plan of Mr. Anil Sharma and Mr. Satvinder Singh, after the same had been approved by 100% voting share of the Committee of Creditors, and the said

persons were permitted to take control of the affairs of the 4th respondent-Company.

16) One of the consequences of this approval of the Resolution Plan by the NCLT is that the existing equity share capital of the 4th respondent stood written off in view of the *Clean Slate* Principle envisaged under the IBC.

17) So the appellant-writ petitioner ceased to be not only a share holder but also a Member of the Board of Directors of the 4th respondent.

The order of the learned Single Judge in CWP.No.2588 of 2018

18) The learned Single Judge took note of these aspects, and in the impugned order passed on 23.08.2021 held that the appellant has no *locus* at this stage to seek a mandamus directing RBI to take action on the complaint filed by the 4th respondent.

19) The learned Single Judge also held that the 4th respondent, which was the appellant in CWP no.648 of 2018, is not aggrieved by the inaction of the RBI in not complying with the undertaking given during the pendency of CWP No.648 of 2018, and only it could have filed the CWP.No.2588 of 2018.

20) He also recorded a finding that the RBI could not take any action pursuant to the undertaking given by the learned Assistant Solicitor

General of India before the Division Bench at the time of passing of the order dt. 13.06.2018 in CWP.No.2588 of 2018 because, just prior thereto, matter was already pending before the NCLT, Chandigarh and also before the Debt Recovery Tribunal (DRT), Chandigarh, and was to be listed on 24.06.2019, and the allegation with regard to wrongful acts of respondents no.1 & 2 was already *subjudice* before the said Fora.

The instant Letters Patent Appeal

- 21) Challenging the same, this Letters Patent Appeal is filed by the appellant (petitioner in CWP no.2588 of 2018) contending that in view of Section 60(5) (c) of the IBC, and the judgment of the Supreme Court in *Vijay Kumar Jain Vs. Standard Chartered Bank & Others*¹, in his capacity as a Member of the erstwhile Board of Directors, he has an independent right to approach this Court.
- 22) We may point out that this contention is untenable because the observation of the Supreme Court in the said judgment at para 19.5 is that under Section 60(5)(c) of the IBC, which is a very wide provision, even a Member of the erstwhile Board of Directors also has an independent right to approach *the Adjudicating Authority*.

¹ (2019) 20 SCC 455

- 23) Thus the appellant, at best, would have the right to approach the NCLT, which is the Adjudicating Authority under the IBC, and not this Court. Admittedly he had already challenged the admission of the matter by the NCLT up to the Supreme Court and lost.
- 24) Moreover, the instant Letters Patent Appeal has been filed on 08.11.2022, prior to the order dt. 27.04.2023 passed by the NCLT approving the Resolution Plan in respect of the 4th respondent.
- 25) Therefore the benefit of the said decision cannot be availed by the appellant as regards the instant LPA, and it is open to him to challenge the order of the NCLT approving the resolution Plan of the Resolution Applicants of Mr. Anil Sharma and Mr. Satvinder Singh before the NCLAT.
- 26) It is also not in dispute that the appellant had in fact filed an application CA no.658 of 2019 for impleadment and CA No.557 of 2019 under Section 60(5) of the IBC, 2016 in CP (IB) No.35/Chd/HP/2018 filed by respondent no.2 before the NCLT. Though the application for impleadment filed by the appellant was allowed on 21.08.2019 and he was impleaded as 3rd respondent, the NCLT rejected the contentions of the appellant claiming relief in view of Section 60(5) of the IBC in a separate order passed on

24.05.2022. The NCLT observed that the issue of assignment of debt cannot be gone into by it since it had arisen much prior to the initiation of the CIRP proceedings and is not related to the Insolvency of the Corporate Debtor (respondent No.4).

Consideration by the Court

- 27) In our opinion, once approval of the Resolution Plan was granted by the NCLT on 27.4.2023 and the Resolution Applicants have taken control of the respondent no.4 Company, and the existing equity share capital of the 4th respondent stood written off in view of the *Clean Slate* Principle envisaged under the IBC, the said order is binding on the appellant as well (see para 40 of the order dt.27.4.2023 of the NCLT).
- 28) Consequently, the appellant-writ petitioner ceased to be not only a share holder but also a Member of the Board of Directors of the 4th respondent.
- 29) We are, therefore, of the considered opinion that the appellant has no *locus* either as a Share Holder or as a Director or as a Former Director of the 4th respondent to continue this Letters Patent Appeal, particularly when no leave of the NCLT had been obtained to pursue this Letters patent Appeal by him.

- 30) Also, when the Management of the 4th respondent already stood transferred by reason of approval of the Resolution Plan by the NCLT, it's new Management should pursue the grievance which is now being pursued by the appellant.
- 31) But the counsel for the 4th respondent has stated, on instructions, that the new Management has instructed him to inform this Court that they have no interest in pursuing this litigation, which is purportedly being pursued by the appellant for the benefit of the 4th respondent.
- 32) We also agree with the other reasons given by the learned single judge for declining relief to the appellant.
- 33) Having regard to all these circumstances, we find no merit in the appeal.
- 34) Accordingly, the appeal is dismissed. No costs.
- 35) Pending miscellaneous application(s), if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Jyotsna Rewal Dua)
Judge

December 01, 2023
(Yashwant)