

ITEM NO.9 Court 3 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3624/2020

VIVEK AGARWAL

Appellant(s)

VERSUS

KANAK RESOURCE MANAGEMENT LIMITED & ANR.

Respondent(s)

(WITH IA No.113449/2020-EX-PARTE STAY and IA No.113450/2020-EXEMPTION FROM FILING AFFIDAVIT)

Date : 01-12-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MS. JUSTICE INDU MALHOTRA  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s)

Mr. Amit Agrawal, AOR

For Respondent(s)

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

- 1 Mr Amit Agrawal, learned counsel appearing on behalf of the appellant, submits that the Corporate Insolvency Resolution Proceedings<sup>1</sup> against the corporate debtor (the first respondent) commenced on 25 September 2017 with an order of the National Company Law Tribunal<sup>2</sup> against which an appeal was dismissed by the National Company Law Appellate Tribunal<sup>3</sup> on 5 October 2017.
- 2 In the meantime, it has been submitted, that the Resolution Plan had been approved by the Committee of Creditors. Subsequently, in an unconnected case (Annexure A-20), the NCLAT, by an order dated 15 October 2018, stayed

1 "CIRP"

2 "NCLT"

3 "NCLAT"

proceedings against the ILFS Group of Companies. Following this, it has been submitted that the Resolution Professional moved an application in the petition placing on the record the order dated 15 October 2018 and sought stay of further proceedings before the NCLT.

3 In the meantime, it has been submitted that the Union of India, through the Ministry of Corporate Affairs, filed an affidavit on 12 March 2019, stating that the corporate debtor was undergoing the CIRP under the Insolvency and Bankruptcy Code 2016. The Resolution Professional filed an application before the NCLAT seeking a clarification of its order dated 15 October 2018, which was dismissed granting liberty to him to approach the NCLT. Subsequently, the Resolution Professional filed an application for revival/ continuance of the CIRP. While dealing with the application, the order of the NCLT dated 21 October 2019, however, dismissed the "petition". The order, it has been urged, indicates that the IA (filed by the RP) was disposed of. Following this order, an application was filed for seeking a clarification that only the IA was disposed of and not the main petition, which was dismissed by the NCLT. The order of dismissal has been confirmed by the NCLAT.

4 On the above factual foundation, it has been submitted by Mr Agrawal that, as a matter of fact:

- (i) The CIRP process has already been initiated;
- (ii) The order dated 15 October 2018 of the NCLAT in an unconnected case did not in any event warrant the dismissal of the proceedings, but at the best, a stay of existing proceedings; and
- (iii) Hence, the dismissal of the petition by the NCLT is erroneous.

5 Issue notice, returnable on 16 December 2020.

6 Dasti, in addition, is permitted.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**COURT MASTER**