2024:PHHC:143630

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-26571-2017 (O&M)
Date of decision: 05.11.2024**

Amira Pure Foods Pvt. Ltd. and another ...Petitioners

VERSUS

State of Haryana and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Harsh Gurbhanui, Advocate for the petitioners (through V.C.)

Mr. Pankaj Mulwani, DAG Haryana.

Mr. Ajay Beniwal, Advocate and
Mr. Vivek Goyal, Advocate for respondent No.2.

Mr. Harsh Gupta, Advocate
for respondents No.3, 4, 8, 12, 13, 36, 44 and 104.

Mr. M.L. Saggar, Sr. Advocate
(Member of the Committee as Amicus Curiae) with
Ms. Armaan Saggar, Advocate.

Mr. Arun Bansal, Advocate (through V.C.)
for respondents No.4, 7, 36 and 103.

Mr. Rohit Rattewal, Advocate for
Mr. Ashish Yadav, Advocate for respondent No.9.

Mr. S.S. Kaushik, Advocate;
Mr. Mandeep Singh Jangu, Advocate
for respondents No.10, 15 to 31, 35, 42 to 91.

Mr. Lajpat Rai Sharma, Advocate
for respondents No.13, 14 and 92 to 98.

Mr. Abhimanyu Bishnoi, Advocate and
Mr. Shiv Kumar Sharma, Advocate for respondent No.13.

Mr. R.S. Budhwar, Advocate for respondent No.33.

Ms. Vamika Johar, Advocate for
Mr. Pritam Singh Saini, Advocate for respondent No.123.

Mr. Buta Singh, Advocate for respondents No. 2, 34 and 36.

Mr. Arun Bansal, Advocate and
Mr. Anubhav Bansal, Advocate;
Ms. Geeta Rani, Advocate for respondents No.4, 7, 36 and 103.

Mr. Amardeep Sandhu, Advocate for
Mr. Aman Pal, Advocate for respondents No.11 and 12.

Mr. Vinod Kumar Bansal, Advocate for respondent No.34 and for applicant(s) in CM-19540-CWP-2018.

Mr. Munish Kumar Garg, Advocate and
Mr. Tanuj Goyal Tohana, Advocate;
Mr. Yuwan Singla, Advocate;
Mr. Rakesh Kumar Jangra, Advocate
for respondents No.39, 40, and 99.

Ms. Beleena Biju, Advocate and
Mr. Pranav Chitale, Advocate for respondent No.113,
(through V.C.).

Mr. Gourav Jain, Advocate and
Mr. Jatinder Singh, Advocate for the applicant(s)
in CM-10431-CWP-2018, CM-10858-CWP-2018,
CM-11089-CWP-2018 and CM-11233-CWP-2019.

Mr. Tejas Bansal, Advocate and
Mr. Sanjiv Kumar Aggarwal, Advocate for the applicant(s)
in CM-6502-CWP-2019, CM-6802-CWP-2019,
CM-6843-CWP-2019, CM-6498-CWP-2019,
CM-6803-CWP-2019, CM-6843-CWP-2019
and CM-8475-CWP-2017.

Mr. Kuldeep, Advocate for
Mr. Tribhuwan Singla, Advocate for the applicant(s)
in CM-18527-CWP-2021, CM-18528-CWP-2021.

Mr. Rajendra Kumar Gupta, Advocate for the Liquidator
(through V.C.).

Mr. Sushil K. Bhardwaj, Advocate for
Mr. C.S. Pasricha, Advocate for the applicant(s)
in CM-13587-CWP-2019.

Mr. Sanchit Punia, Advocate for the applicant(s)
in CM-10853-CWP-2018.

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VINOD S. BHARDWAJ, J. (Oral)

CM-10431-CWP-2018
CM-10853-CWP-2018
CM-10858-CWP-2018
CM-11089-CWP-2018
CM-11233-CWP-2019
CM-13587-CWP-2019
CM-15041-CWP-2018
CM-15933-CWP-2018
CM-18527-CWP-2021
CM-18528-CWP-2021
CM-19209-CWP-2019
CM-19224-CWP-2019
CM-19247-CWP-2019
CM-19357-CWP-2019
CM-19378-CWP-2019
CM-19514-CWP-2018
CM-19540-CWP-2018
CM-2265-CWP-2019
CM-6502-CWP-2019
CM-6803-CWP-2019
CM-6843-CWP-2019
CM-8886-CWP-2019
CM-9279-CWP-2021
CM-9949-CWP-2018

Prayer in the applications is for impleadment of the respective parties.

For the reasons mentioned in the applications, the same are allowed subject to all just exceptions and only to establish their respective claims. The respective amended memo of parties are taken on record. Registry is directed to do the needful.

Main case:

1. Learned counsel appearing on behalf of the Liquidator contends that the present petition was filed by the juristic entity(ies) along with the Directors/Promoters but the said Directors/Promoters are neither participating in the liquidation proceedings nor furnishing the record that has been sought for. He submits that the Director is also not appearing in the

criminal proceedings that have been instituted against him in different Court and Fora by IDBI.

2. He further submits that the instant writ petition had been initially filed for issuance of directions to the State of Haryana to constitute a Special Investigation Team(SIT) for investigation into the 11 FIRs mentioned in the head-note of the petition. The Senior Advocate who was representing the petitioner stopped appearing for them and there has been no attempt by petitioner No.1 to argue the matter or by petitioner No.2 to appear in the case. It is submitted that during the pendency of the present petition, petitioner No.1-Company has gone into liquidation and a Liquidator already stands appointed. The promoters/Directors were also directed to join the investigation and to surrender their passport(s) vide order dated 11.01.2018.

3. It was noticed by this Court that the petitioner had offered to settle the dues in installments, alleging that the dispute was civil in nature. Notice of motion was issued subject to the petitioner depositing the first installment within 15 days and considering the possibility of settlement amongst the parties. A conditional interim order against coercive action was also passed. The second installment was offered to be deposited by 28.02.2018, as per order dated 14.02.2018. When the matter was fixed on 14.03.2018, counsel for respondents raised objection against incorrect dues being shown by the petitioner who expressed financial hardship in repayment but reiterated his undertaking to pay the principal amount alongwith interest @18% per annum upto 31.03.2015. This Court directed the petitioner to furnish details of assets and liabilities of the Company and

the timelines as well as the mode and manner in which re-payment could be made.

4. The matter was ordered to be listed for arguments on 26.04.2018. On the said date, matter was ordered to be placed before the Permanent Lok Adalat for settlement. There was however a default in payment of installments and the Lok Adalat directed petitioner to deposit the installments timely. The petitioner however continued to default as is evident from the orders passed by the Lok Adalat on 11.05.2018 and on subsequent dates. The matter was sent back to the High Court vide order dated 22.05.2018.

5. With a view to settle the accounts, a three member Committee of Senior Advocates was constituted by this Court vide order dated 08.08.2018 on recording of statement of counsel for the petitioner that entire outstanding amount shall be cleared within two weeks and to continue paying as per understanding between the parties. The issues were to be settled in 03 months.

6. Instead of needful, only a sum of Rs.20.25 lakhs was deposited. Petitioner undertook to deposit a further amount of Rs.20 crores on or before 31.12.2018 but only a sum of Rs.7.5 crores was deposited by 21.12.2018. It was assured that the due amount shall be cleared. The needful was not done and was so noticed by this Court in its order dated 07.02.2019. It was also noticed that Corporate Insolvency Resolution Process (CIRP) had been initiated against the petitioner-Company by the National Company Law Tribunal in case No.IB-846(ND)/2018 and an Interim Resolution Professional (IRP) has been appointed. Assurance was given to deposit the

amount as per the undertaking. No substantial progress took place since. This Court hence directed the Registrar to deposit the amount in an interest bearing account vide order dated 26.11.2019 after noticing the impasse.

7. Nothing transpired worth substance. On 22.09.2020, the Liquidator appeared and raised a claim on the deposited amount. Matter was adjourned to enable the Liquidator to move an appropriate application. The matter has since then continued to be adjourned, to which Liquidator raised objections.

8. It has further been pointed out by the learned counsel for the respondents that during the pendency of the present proceedings, respondent No.113 i.e. M/s Amira Nature Foods Ltd., Mauritius made a deposit of various amounts with the Registrar of this Court so as to settle the claims of various persons. While a claim is made on behalf of respondent No.113 that it is a separate juristic entity and that the funds set/transferred by it cannot be deployed for offsetting the claim of the petitioner-Company, the learned counsel for the Liquidator however contends that the juristic entity of the Company is one and the same and that the relationship can be fully established by lifting of a corporate veil. He claims that after initiation of the liquidation proceedings under the Insolvency and Bankruptcy Code, 2016, the parties are required to submit their claim(s) before the Liquidator for settlement thereof in terms with the scheme as approved by the National Company Law Tribunal.

9. He further submits that in the event of any party having any objection or claiming any separate right, there is no prohibition or bar in law which disentitles the party to file any such appropriate application before the

National Company Law Tribunal and/or before the Liquidator and that the Insolvency and Bankruptcy Code, 2016 being a complete Code in itself, there is an efficacious remedy already available to the respective parties to espouse their grievances and to seek redressal thereof.

10. Learned counsel appearing on behalf of respondent No.113 however contend that the amount in question was deposited pursuant to the various interim orders passed and are in the custody of this Court and that they are in the process of moving an appropriate application for seeking refund of the said amount.

11. He further contends that the amount was deposited to get rid of the criminal liability of the Directors at the contemporaneous period of time and the amount as deposited cannot be formed part of liquidation at this stage as defined under the law.

12. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition and gone through the specific averments.

13. It is evident from a perusal of the proceedings that transpired over a period of more than 08 years before this Court that the petitioner had never pressed for transfer of investigation and infact had offered to pay the entire outstanding amount, as per demand raised by the Committee. Despite such assurance and undertaking of 08.08.2018, the position remained that of a persistent defaulter. In the meanwhile, Insolvency Proceedings were initiated and IRP undisputably stands appointed. As per the provisions of law, once IRP has been appointed under the IBC, the settlement of claim is to be done under the specific statute. Any act by the High Court to

independently initiate settlement of claims of the creditors may be in conflict with the liquidation scheme or revival scheme as is required to be statutorily approved by the National Company Law Tribunal.

14. Under such circumstances, High Court is required to exhibit restrain and matter then ought to be settled in the manner prescribed under the statute. The respondents-creditors cannot claim any superior right or preference then what the law provides for. They thus cannot claim any special resolution/settlement process notwithstanding the statutory scheme.

15. Even though it is submitted by counsel for respondent No.113 (also for petitioner No.1 earlier) that the amount was deposited on the asking of the Court, however, this argument is devoid of merit since the petitioner himself had undertaken to deposit the amount for settlement of the claim and had enjoyed an interim protection on his assurances and undertaking. More so, when the petitioner intended the amount to be used for settlement of claims of creditors, it should no more be his concern as to claims of which creditors are settled and/or as to the settlement is undertaken through the High Court or the Liquidator under the IBC-2016. The contention is thus rejected.

16. Besides, this Court fails to find any merit in the objection about the respondent No.113 being a separate juristic entity, at this stage. There is no bar to the above argument being raised before the National Company Law Tribunal and the said statutory Tribunal is fully equipped and empowered to examine the issue and adjudicate on the same. The petitioner would thus be at liberty to raise all the issues and objections. There is no finding on merits of the objection recorded by this Court and it has only

noticed the subsequent developments after institution of the proceedings before this Court and legal implications about maintainability of the claims before this Court once CIRP proceedings have already been set in motion and has taken note of the special statute that now governs the proceedings.

17. The claim by respondent No.113 for withdrawal of the said amount also shows that there is lack of willingness to settle the claims of the respondent-claimants herein. They would thus be required to submit their respective claims and objections before the Liquidator or the National Company Law Tribunal for assessment of their claims and for refund thereof, in accordance with law.

18. In as far as the contention of learned counsel for respondent No.113 that the amount(s) deposited does not form part of the liquidation estate and that the said amount cannot be utilized for settlement of the claims of the respondents is concerned, I find that the contention advanced by the applicant-respondent can also be raised before the National Company Law Tribunal/the Liquidator, by moving an appropriate application/petition, as may be so advised. Since an efficacious alternative remedy has been provided, it would thus be expedient and in fitness of things that the parties should exhaust the said remedies, as are made available under the specific special statute.

19. The present writ petition is accordingly disposed of at this juncture with the following directions:-

(i) That the petitioner/respondents-claimants are at liberty to move applications in support of their respective claims to the Liquidator/the National Company Law Tribunal, as advised and upon submission of such claims, an appropriate action/decision shall be taken on the same;

(ii) That the amount deposited with the Registrar to the tune of Rs.49.65 crores including amount claimed to be deposited by respondent No.113- M/s Amira Nature Foods Ltd., Mauritius to the tune of Rs.16 crores approx. shall be transferred alongwith accrued interest, by the Registrar of this Court to the Registrar of the National Company Law Tribunal, Delhi;

(iii) That the respondents/petitioners shall be at liberty to move an appropriate application(s) for seeking release/withdrawal as well as for staking claims on the said amount before the National Company Law Tribunal/Official Liquidator as the case may be and be subject to order to be passed by the prescribed authority.

20. The competent authority shall take a final decision on the above said corpus and its utilization/entitlement as per law.

21. The present writ petition is accordingly disposed of.

22. This Court expresses its gratitude to the Amicus Curiae Committee consisting of Mr. M.L. Saggar, Sr. Advocate, Mr. Mandeep Singh Bedi, Sr. Advocate and Mr. Sanjeev Manrai, Sr. Advocate constituted by this Court vide order dated 08.08.2018 for having spared their valuable time. While appreciating their cooperation and assistance, it is ordered that the said Committee becomes *functus officio* in view of the order passed today by this Court.

23. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

05.11.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No