

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16707 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 16755 of 2021****HARISHKUMAR BHAGWANDAS JARIWALA****Versus****GEORGE SAMUEL****Appearance:****MR VISHWAS K SHAH(5364) for the Petitioner(s) No.****1,10,11,12,2,3,4,5,6,7,8,9****NEHA M SHAH(9218) for the Petitioner(s) No. 1,10,11,12,2,3,4,5,6,7,8,9****for the Respondent(s) No. 2,3,4,5****MR ARJUN M PADHIYAR(10586) for the Respondent(s) No. 1****MR ATUL SHARMA(11174) for the Respondent(s) No. 1****CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 16/11/2021****COMMON ORAL ORDER**

1. Mr. Vishwas K. Shah, learned advocate appearing for the petitioners in Special Civil Application No.16707 of 2021, requested for withdrawal of the captioned writ petition urging that some observations may be made as regards the pendency of the proceedings persuaded by the petitioners. It is submitted that the petitioners, had challenged the order dated 01.03.2021 passed by the National Company Law Tribunal (NCLT) (hereinafter referred to as the "Tribunal") before this Court and this Court has all through out protected till the order dated 26.10.2021 passed disposing of the writ petition with a liberty to the petitioners to approach the Tribunal requesting the stay of the order dated 01.03.2021. It is submitted that the petitioners should not be non suited only on the ground of filing of the appeal after 45 days. The Tribunal has got the powers to condone the delay for 30 days and for another 15 days as per the provisions of the Insolvency and Bankruptcy Code, 2016. It is urged that let the National Company Law Appellate Tribunal

(NCLAT) (hereinafter referred to as the “Appellate Tribunal”) take into account such submissions of the petitioners and may not dismiss the appeal only on the ground of filing it with delay. It is submitted that the petitioners are seeking withdrawal of the captioned writ petitions with some observations.

2. Mr.Jaimin R. Dave, learned advocate appearing for the petitioner in Special Civil Application No.16755 of 2021 has argued on the same line as has been argued by Mr.Vishwas K. Shah, learned advocate appearing for the petitioners in Special Civil Application No.16707 of 2021. Mr.Jaimin R. Dave, learned advocate, while inviting the attention of this Court to the order dated 26.10.2021, has submitted that the filing of the captioned writ petition is not barred inasmuch as this Court, while passing the order dated 26.10.2021, has categorically observed that the Court, has not gone into the merits of the case. It is therefore submitted that since the Court, has not examined the merits, it was very much open to the petitioners to have filed the captioned writ petitions and remedy under Article 226 of the Constitution of India is not barred and this Court can very well entertain the writ petitions.

3. On the other hand, Mr.Sandeep Singhi, learned advocate appearing with Mr.Atul Sharma, Mr.Abhishek Shah and Mr. Arjun Padhiyar, learned advocates for respondent No.1 has strongly objected to the withdrawal of the captioned writ petitions. While inviting the attention to the order dated 26.10.2021 passed by this Court in Special Civil Application No.5042 of 2021 and more particularly para 5, it is submitted that the petitioner, in the earlier round of litigation, has requested this Court to pass similar order as passed in Special Civil Application No.11031 of 2021. It is submitted that this Court, in para 8.1, has directed the Tribunal to notify I.A. No.537 of 2020, I.A. No.567 of 2020 & I.A. No.700 of 2020 and other allied matters for the purpose of providing an opportunity to the

petitioners to make further prayers for stay, after the pronouncement of the decision, which was already pronounced on 01.03.2021. This Court, had made it clear that the order dated 01.03.2021 passed in the proceedings, shall remain as it is and the Tribunal is not required to pass any order afresh nor is required to offer hearing to any of the parties except considering the request, if any, for stay of the order pronounced for the interregnum period to prefer appeal by the aggrieved party. It is therefore submitted that the order dated 01.03.2021, has not been disturbed. It is also submitted that from the order dated 26.10.2021, three things can be discern out namely (i) order is by invitation; (ii) for the limited purpose of requesting the stay of the order before the Tribunal and (iii) the order dated 01.03.2021, passed by the Tribunal, has not been disturbed.

3.1 It is further submitted that after the order dated 26.10.2021, passed by this Court, the matters were listed before the Tribunal on 29.10.2021 and the stay of the order dated 01.03.2021 was prayed for and the Tribunal, has stayed the order dated 01.03.2021 for a period of two weeks from 29.10.2021. The said period of two weeks got over on 12.11.2021. It is also submitted that the petitioners instead of approaching the Appellate Tribunal, have filed the present writ petitions on 08.11.2021 challenging the very same order of 01.03.2021 which was already challenged in the earlier proceedings in Special Civil Application No.5042 of 2021 and other allied matters. It is submitted that after the order dated 26.10.2021, the filing of the present writ petitions challenging the very same order dated 01.03.2021 passed by the Tribunal, is nothing but an abuse of process of Court and that the withdrawal may not be permitted and the petitions be dismissed with exemplary cost.

3.2 It is further submitted that on 08.11.2021 and 10.11.2021, two writ petitions were filed, one by the petitioners and another by the another petitioner in Special Civil Application No.16755 of 2021. It is submitted that the respective petitioners, have moved the vacation Court only with a view to seeing that by any how, they get the order. In fact, the Appellate Tribunal, had reopened on 08.11.2021 and therefore, the petitioners could have filed an appeal as prayed for; however, the petitioners, only with a view to abusing the process of Court, have filed the captioned writ petitions. The intention behind filing the present writ petitions, is, any how to take any interim protection and to delay the proceedings for another six months. It is also submitted that the petitioners very much knew where to approach but chose not to file any appeal before the Appellate Tribunal and have preferred the captioned writ petitions under Article 226 of the Constitution of India.

3.3 While comparing the petition memo of Special Civil Application No.5042 of 2021 with the petition memo of the captioned writ petition, it is submitted that except two or three grounds, all the grounds are verbatim same. Therefore, once the petitioners had already challenged the order dated 01.03.2021 and agreed for the order dated 26.10.2021, they could not have filed the captioned writ petitions. Such attempt on the part of the petitioners is mischievous and abuse of process of the Court, not to submit but forum shopping and such practice should be deprecated. It is also urged that the petitions be dismissed with cost so as to have the deterrent effect.

4. Heard the learned advocates for the respective parties, perused the record of the captioned writ petitions.

5. Pertinently, the challenge in the earlier writ petition being Special Civil Application No.5042 of 2021 and Special Civil

Application No.5090 of 2021 was the order dated 01.03.2021 passed by the Tribunal. The order was, *inter alia*, challenged on the ground that after hearing all the parties the matters were reserved for judgment vide order dated 19.01.2021 and thereafter the matters were not notified in the cause list published by the Tribunal for pronouncement. It is only when the petitioners received the e-mail from Resolution Professional intimating the uploading of the order dated 01.03.2021, the petitioners came to know about the order. According to the petitioners, in absence of the listing of the matters for pronouncement of judgment, the pronouncement cannot be construed to be pronouncement in the realm of law. In support of such contention, reliance was placed on the judgment rendered by the High Court of Bombay in the case of *Kamal K. Singh v. Union of India* rendered in Writ Petition No.3250 of 2019. In the interregnum, in the similar such writ petition being Special Civil Application No.11031 of 2021, the co-ordinate Bench, has disposed of the writ petition directing the parties to approach the Tribunal on the limited ground for considering the request of the petitioner therein for stay of the judgment. The Tribunal was directed to consider the request of the parties on merits; however, the order passed by the Tribunal was not interfered with. It is not disputed that the petitioners, agreed for passing of the order dated 26.10.2021. Therefore, Mr.Singhi, learned advocate is right in contending that the order dated 26.10.2021 was passed on invitation. Further, in para 8.1, the directions has been issued to the Tribunal to notify the I.A. No.537 of 2020 and other allied matters only for the limited purpose of providing an opportunity to the petitioners to make further prayers, since the pronouncement on 01.03.2021 was not within their knowledge. This Court, in para 8.2, has made it clear that the order dated 01.03.2021, shall remain as it is and that the Tribunal was not required to pass fresh order nor the Tribunal was required to

offer hearing to any of the parties except considering the request, if any, for stay of the order pronounced for the interregnum.

6. Clearly, the matter was remitted back to the Tribunal only for the limited purpose of requesting for stay of the order pronounced for the interregnum period and to prefer an appeal by the aggrieved party. Accordingly, the Tribunal has listed the application and passed an order dated 29.10.2021 whereby, the request of the stay of order was acceded to and the order dated 01.03.2021, was kept in abeyance for a period of two weeks in order to enable the concerned parties to prefer appeal. Neither the order dated 26.10.2021 nor the order of the Tribunal dated 29.10.2021 were construed to mean that liberty was reserved in favour of the petitioners to prefer writ petition under Article 226 of the Constitution of India. The present writ petitions, have been filed once again with a prayer to quash and set aside the order dated 01.03.2021. The present writ petitions are nothing but an attempt on the part of the petitioners to re-litigate the very same cause which was the subject matter of the writ petition in the earlier round of litigation. This Court, is of the opinion that the present writ petitions are nothing but an attempt on the part of the petitioners abusing the process of the Court. The Apex Court, in the case of *Udhyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of Uttar Pradesh and others* reported in (2008) 1 SCC 560 has held and observed in para 16 that *"A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amount to abuse of the process of law."*

7. Besides, the petitioners in para 4 of the writ petition being Special Civil Application No.16707 of 2021 and in para 6 of the Special Civil Application No.16755 of 2021, have made declaration

that they have not filed any other petition before any other Court or this Hon'ble Court on the said subject matter or before Hon'ble Supreme Court of India. As per the requirement of Rule 174 of the Gujarat High Court Rules, 1993, the petitioners are obliged to state whether the petitioners have filed any application or other proceedings in the Supreme Court, High Court or any other Court in respect of the same matter and how that application or proceeding has been disposed of. Though the petitioners have set out the details in the captioned writ petitions, such declaration, as required is missing. It was expected of the petitioner that they should have incorporated the declaration as required; however, the petitioner chose not to do so. Be that as it may.

8. In view of the aforementioned discussion, the present writ petitions are nothing but an attempt on the part of the petitioners to abuse the process of Court, relitigating the same subject matter. Such action on the part of the petitioners is deprecated. This Court, would have accepted the request on behalf of the respondent No.1 for dismissal of the writ petitions; however, considering the fact that dismissal of the writ petitions would confirm the order dated 01.03.2021 wherein other parties were also before the Tribunal. Therefore, this Court deems it fit to permit the petitioners to withdraw the present writ petitions imposing the cost of Rs.1 lakh each. Let Rs.50,000/- each be deposited with the Gujarat State Legal Services Authority and the remaining Rs.50,000/- each be paid to the respondent No.1.

9. In view of above, the petitions are disposed of as withdrawn.

(SANGEETA K. VISHEN, J)

RAVI P. PATEL