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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 28.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 23638 of 2021
and
W.M.P.No.24886 of 2021

M/s. Bafna Pharmaceuticals Limited,
a company incorporated under the Companies Act,
having its registered office at
Bafna Towers, New No.68, Old No.299,
Thambu Chetty Street,
Chennai – 600 001.
Represented by its Chief Financial officer,
Mr.M.Sridhar ...Petitioner

Vs.

The Assistant Commissioner of Provident Fund
Regional Office,
R-40 A-1, TNHB Shopping Cum Office complex
Mugappair Road,
Mugappair East,
Chennai – 600 037. …Respondent

Prayer in W.P.

To issue a writ in the nature of writ of Certiorari or any other writ direction or order of similar nature to call for the records on the file of the Respondent vide

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notice TN/RO/AMB/Recovery/Area-7/36294/RRC-9079&9289/2021 dated 05.10.2021 and quash the same and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.M.P.

To grant interim stay for operation of the impugned notice dated 05.10.2021 issued by the Respondent vide TN/RO/AMB/Recovery/Area-7/36294/RRC-9079 and 9289/2021 till the date of disposal.

Appearance of Parties:

For Petitioner : Mr. T.Ravichandran, Advocate

For Respondent: Ms. Sunita Kumari, Standing Counsel

J U D G M E N T

Heard.

2.The petitioner, M/s. Bafna Pharmaceuticals Limited, was admitted into the Corporate Insolvency Resolution Process (CIRP) by the National Company Law Tribunal (NCLT), Chennai Bench, by order dated 16.07.2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016. A Resolution Plan was subsequently approved by the NCLT on 01.02.2019, which was affirmed by the National Company Law Appellate Tribunal (NCLAT). The Civil Appeal filed before the Hon'ble Supreme Court challenging the approval was dismissed in Civil Appeal No. 5344 of 2019 dated 15.07.2019.

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3.The petitioner challenges the recovery notice dated 05.10.2021 issued by the respondent, wherein interest under Section 7Q and damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 were levied. The petitioner was directed to remit a sum of Rs. 33,67,817/- within ten days, failing which recovery proceedings under Paragraph 32(a) of the EPF Scheme, 1952 were to be initiated. The writ petition was admitted on 02.11.2021 and interim stay was granted, which was extended on 15.03.2022. The respondent filed a counter affidavit dated 07.01.2022.

4.The respondent raised a preliminary objection that the petitioner has no locus to challenge the order passed upon conclusion of Section 7A proceedings. It was submitted that the petitioner had, by letter dated 24.03.2021, acknowledged the pendency of insolvency proceedings and advised the respondent to raise a claim before the NCLT. The respondent also stated that as per its Enforcement Officer, the petitioner establishment had resumed operations under the supervision of the Implementation and Monitoring Committee (IMC) constituted by the NCLT.

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5.The respondent contended that the petitioner, by letter dated 15.10.2019, informed the EPFO about submission and approval of the resolution plan by the Committee of Creditors and its subsequent approval by the NCLT, Chennai, by order dated 01.12.2019. It was also submitted that the EPFO was not a party before the NCLT and that the Approved Resolution Plan (ARP) does not bind statutory authorities or extinguish statutory liabilities.

6.It was further stated that for the period from December 2015 to March 2016, a separate assessment under Section 7Q was made, quantifying dues at Rs. 3,13,986/-. The EPF Act, being a welfare legislation, vested a statutory obligation on authorities to recover such dues. The respondent denied the applicability of the judgment in **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657**, to the facts of the present case.

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7.In response, the petitioner submitted that the dues sought to be recovered were not part of the claims lodged before the Resolution Professional and were not provided for in the Approved Resolution Plan. Hence, all such claims stood extinguished. Reliance was placed on **Ruchi Soya Industries Limited v. Union of India, (2022) 6 SCC 343**, wherein it was held that once a resolution plan is approved under Section 31(1) of the IBC, 2016, all claims not forming part of the plan stand frozen.

8.The petitioner further relied on decisions of this Court in **Aginiti Industrial Parks Pvt. Ltd. v. Superintendent of CGST & Central Excise, W.P. No. 11097 of 2021 dated 11.12.2023; M/s. Splendid Metal Products Ltd. v. The Assistant Commissioner (State Taxes), W.P. No. 27225 of 2022 dated 15.11.2024**; and the judgment of the Hon'ble Supreme Court in **Electrosteel Steels Ltd. v. Ispat Carriers Pvt. Ltd., 2025 ibclaw.in 135 (SC)**. These decisions reaffirm the principle that no claim, including by government authorities, can be enforced if it is not part of the approved resolution plan. However, the issue that arises in the present case is the maintainability of the writ petition in light of the statutory remedy provided under the IBC.

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9.During the final hearing, this Court specifically queried the petitioner regarding the maintainability of the writ petition, in view of the remedy available under Section 60(5) of the IBC, 2016. Where any claim arising from the pre-CIRP period or a liability not forming part of the approved resolution plan is questioned, the proper forum is the NCLT. The maintainability of the writ petition, therefore, was put in issue.

10.Learned counsel for the petitioner contended that the existence of an alternative remedy does not oust the writ jurisdiction of this Court. Accordingly, the following question arises for consideration: Whether the present writ petition is maintainable in view of the availability of an efficacious alternative remedy under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

11.The IBC, 2016 is a comprehensive and self-contained legislation intended to facilitate the revival of corporate debtors through maximisation of asset value and resolution of claims in a time-bound manner. The Hon'ble Supreme Court, in **Embassy Property Developments Pvt. Ltd. v. State of**

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Karnataka, (2020) 13 SCC 308, has held that High Courts ought to refrain from exercising jurisdiction under Article 226 in matters falling within the purview of the NCLT/NCLAT, except in exceptional circumstances, namely:

> i. where the liquidator or authority acts wholly without jurisdiction;
> ii. where there is a blatant violation of the principles of natural justice; or
> iii. where the action is manifestly arbitrary or actuated by mala fides.

12.The case at hand does not fall within any of the exceptions carved out by the Hon'ble Supreme Court. A Division Bench of this Court, in **W.P. No. 712 of 2024, by order dated 23.01.2025 in Dharamshi K. Patel and another v. Kamala D. Patel and others**, while dealing with a writ petition challenging an order of admission passed by the NCLT, Chennai Bench admitting the corporate debtor into the insolvency resolution process, observed as follows:

> "(23)Both sides relied upon a few judgments on the maintainability of the writ petition under Article 226 of the Constitution of India in view of the alternative remedy available. This Court in exceptional cases can entertain a writ petition under Article 226, as there are several exceptions carved out by this Court and Hon'ble Supreme Court to entertain a writ petition under Article 226 despite there is an alternative remedy. However, we find no extraordinary situation or circumstance warranting this Court to entertain a writ petition when there is an effective alternative remedy. Therefore, this Court finds no merit in this writ petition.

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(24)Accordingly, this writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed."

13.The Supreme Court, while addressing the issue of maintainability of writ petitions before the High Court against orders passed by the Debts Recovery Tribunal (DRT) in the face of an available statutory alternative remedy, in **PHR Invent Educational Society v. UCO Bank, decided on 10 April 2024 and reported in 2024 INSC 297**, observed as follows:

> "29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:
>
> (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
>
> (ii) it has acted in defiance of the fundamental principles of judicial procedure;
>
> (iii) it has resorted to invoke the provisions which are repealed; and
>
> (iv) when an order has been passed in total violation of the principles of natural justice.
>
> 30. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.
>
> 31. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in the case of Chhabil Dass Agarwal (supra(2014) 1 SCC 603)).

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32. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of Satyawati Tondon (supra (2010) 8 SCC 110)) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act, and the SARFAESI Act, in spite of availability of an effective alternative remedy:

> "55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act, and the SARFAESI Act, and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care, and circumspection."

14.Just as the Recovery of Debts and Bankruptcy Act and the SARFAESI Act are recognised as complete and self-contained codes, the Insolvency and Bankruptcy Code, 2016 is likewise a comprehensive legislation. The Supreme Court, in **Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308**, made the following observations regarding the nature and scope of the Code:

> "11. It is beyond any pale of doubt that IBC, , 2016 is a complete Code in itself. As observed by this Court in M/s Innoventive

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> Industries Limited vs. ICICI Bank,3 it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others. It is also true that IBC, , 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time bound manner. The code provides a three-tier mechanism namely (i) the NCLT, which is the Adjudicating Authority (ii) the NCLAT which is the appellate authority and (iii) this court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. In so far as insolvency resolution of corporate debtors and personal 3 AIR 2017 SC 4084 guarantors are concerned, any order passed by the NCLT is appealable to NCLAT under Section 61 of the IBC, , 2016 and the orders of the NCLAT are amenable to the appellate jurisdiction of this court under Section 62. It is in this context that the action of the State of Karnataka in bypassing the remedy of appeal to NCLAT and the act of the High Court in entertaining the writ petition against the order of the NCLT are being questioned."

15.Thus, the IBC, 2016 being a complete code providing for a specialised adjudicatory mechanism, the writ petition filed by the petitioner bypassing such framework is held to be not maintainable. In view of the above, the writ petition stands dismissed on the ground of maintainability. Consequently, the connected miscellaneous petition also stands dismissed. However, liberty is reserved to the petitioner to avail appropriate remedy, if so advised, before the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016. There shall be no order as to costs.

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

The Assistant Commissioner of Provident Fund
Regional Office,
R-40 A-1, TNHB Shopping Cum Office complex
Mugappair Road,
Mugappair East,
Chennai – 600 037.

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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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