

\$~20 & 21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 350/2020 & CM APPL 11249/2020 (stay)

ARVIND KUMAR RASTOGI Petitioner
Through: Mr. Piyush Singh with Mr. Akshay
Srivastava, Advocates.

versus

THE NATIONAL COMPANY LAW
TRIBUNAL AND ANR Respondents
Through: Mr. B.S. Shukla, CGSC for UOI with
Mr. Sawan Kumar Shukla, Adv.

+ W.P.(C) 3322/2020 & CM APPL.11673/2020 (stay)

OM RATAN GOEL Petitioner
Through: Mr. Sushil Aggarwal, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Jasmeet Singh, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
% **24.08.2020**

1. The hearing was conducted through video conferencing.
2. Petitioners impugn order dated 12.05.2020 passed by the Registrar, National Company Law Tribunal whereby it was mandated that no new petition would be entertained in the National Company Law Tribunal without record of default under Section 7 of IBC, 2016.

3. Learned counsel for the petitioner submits that the High Court of Calcutta by judgment dated 18.08.2020 in W.P.No.5595(W) of 2020 titled “*Univalve Projects Pvt. Ltd vs. The Union of India & Ors.*” and another connected petition has held that NCLT has acted without jurisdiction and exceeded jurisdiction conferred under Section 424 of the Companies Act, 2013 and the said order is in violation of the Insolvency and Bankruptcy Code, 2016. Accordingly, has held the order dated 12.05.2020 as ultra vires the Insolvency and Bankruptcy Code and the regulations framed thereunder and has struck it down.

4. Learned counsel appearing for the respondents submit that order dated 12.05.2020 was modified by a notification dated 13.08.2020.

5. The notification of 12.05.2020 which has been struck down by the Calcutta High Court reads as under:-

“All concerned are directed to tile default record from the Information Utility along with the new petitions being filed under section 7 of Insolvency and Bankruptcy Code, 2016 positively. No new petition shall be entertained without record of default under section 7 of IBC, 2016.

The Authorized Representatives/Parties in the cases pending for admission under aforesaid section of IBC also directed to file default record from Information Utility before next date of hearing.”

6. By the amendment dated 13.08.2020 the National Company Law Tribunal has directed as under:-

“In modification of Order File No. 25/02/2020-NCLT dated 12 May, 2020, it is hereby ordered as under;-

All concerned are directed to file default record from the Information Utility along with the new petitions filed under section 7 of the Insolvency and Bankruptcy Code, 2016 wherever available with the Information Utility.

The Authorized Representatives/Parties in the cases pending for admission under aforesaid section of the IBC are also directed to file default record from the Information Utility wherever available with the Information Utility.”

7. The Notification dated 13.08.2020 was issued prior to the judgment of the Calcutta High Court dated 18.08.2020.

8. In-effect the notification dated 13.08.2020 reiterates the notification of 12.05.2020 issued by NCLT, however modifies it to the limited extent that the default record would be filed wherever available with the Information Utility.

9. The Calcutta High Court has struck down order dated 12.05.2020 as being ultra vires the Insolvency and Bankruptcy Code and the regulations framed thereunder. Prima facie I am of the view that since the notification dated 12.05.2020 of NCLT has been struck down by Calcutta High Court, the notification dated 13.08.2020 modifying the earlier notification dated 12.05.2020 which has been struck down cannot also stand.

10. In view thereof, the respondents are directed to file a fresh affidavit indicating their stand with regard to the judgment of the Calcutta High Court dated 18.08.2020. Let the affidavit be filed within two weeks.

11. List on 11.09.2020.

12. In the meantime, operation of notification dated 13.08.2020 shall remain stayed.

13. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J

AUGUST 24, 2020

rk