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IN THE HIGH COURT OF KARNATAKA
AT BENGALURU

DATED THIS THE 4TH DAY OF SEPTEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

WRIT PETITION No.1631/2020 (GM-RES)

BETWEEN:

M/S.ALPINE WINERIES PVT. LTD.,
REGD. OFF.NO.33/1, SAPTHAGIRI ARCADE,
II FLOOR, 8TH CROSS, WILSON GARDEN,
H.SIDDAIAH ROAD,
BENGALURU-560 027,
REPRESENTED BY ITS
MANAGING DIRECTOR
SRI M.THIMMEGOWDA. ... PETITIONER

(BY SHRI VIVEK HOLLA AND
SHRI SANTOSH S.GOGI, ADVOCATES)

AND

M/S.PRIDHVI ASSET RECONSTRUCTION
AND SECURITISATION COMPANY LIMITED,
REGD. OFF: D.No.1-55, 4TH FLOOR,
WING-I, RAJA PRAASADAMU,
MASJID BANDA ROAD, KONDAPUR,
HYDERABAD-500 084,
REPRESENTED BY ITS
MANAGING DIRECTOR. ... RESPONDENT

(BY SHRI M.JAGADEESH, ADVOCATE)

THIS PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER DATED 17.12.2019 PASSED BY THE
NATIONAL COMPANY LAW TRIBUNAL, BENGALURU
BENCH IN C.P. (I AND B) No.286/BB/2019 ANNEXURE-A
AND PERMIT THE PETITIONER HEREIN TO FILE ITS
STATEMENT OF OBJECTIONS AND TO CONSIDER THE

PETITION ON MERITS BY GIVING OPPORTUNITY TO THE PETITIONER.

THIS PETITION COMING ON FOR ORDERS AND THE SAME HAVING BEEN HEARD THROUGH VIDEO CONFERENCE AND RESERVED FOR PRONOUNCEMENT OF ORDER, THIS DAY, P.S.DINESH KUMAR, J., MADE THE FOLLOWING:

ORDER

This writ petition is presented seeking a writ of certiorari and to quash order dated 17.12.2019 passed by the National Company Law Tribunal, Bengaluru Bench, (for short 'the NCLT') in C.P.(IB) No.286/BB/2019 and to permit the petitioner to file its statement of objections before NCLT.

2. Heard Shri Vivek Holla, learned advocate for petitioner and Shri M.Jagadeesh, learned advocate for respondent.

3. Briefly stated the facts of the case are, petitioner-Company availed loan of Rs.36.93 crores from Bank of Maharashtra (for short 'the Bank') as per sanction dated 23.10.2009. The loan

was restructured in the year 2012. It is pleaded that petitioner utilized the entire credit facility towards its infrastructure development and various other works. Due to unpredicted challenges, there was delay in getting receivables, due to the petitioner. Hence, there was delay in paying interest to the bank. The bank issued notice on 12.08.2014 under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). The properties mentioned in the notice as items No.12, 13 and 14 were brought to sale in public auction.

4. In furtherance to the proceedings under SARFAESI Act, a Criminal Misc. No.13045/2015 was filed before the learned Magistrate. Sale notice dated 16.12.2016 and public notice dated 24.12.2016 were published in the newspaper. Petitioner approached this Court in W.P.No.3317/2017 and an interim order was

granted on 30.01.2017 permitting the Bank to go ahead with the proposed auction with a rider that the Bank shall not confirm the sale.

5. On 31.03.2017, Bank assigned its debt to the petitioner-Company.

6. One Suresh claiming to be tenant under petitioner also filed W.P.No.17303/2018 before this Court. An interim order was passed restraining the respondent herein from removing the stocks belonging to the tenant. The said writ petition along with W.P.No.3317/2017 was disposed of on 29.01.2019 granting liberty to the petitioner to approach the Debt Recovery Tribunal (for short 'the DRT'). Petitioner moved the DRT in I.R.No.695/2019 in S.A.No.106/2019 with a prayer to set aside the auctions conducted pursuant to public notice.

7. On 20.08.2019, respondent moved the NCLT, Bengaluru, under Section 7 of the

Insolvency and Bankruptcy Code, 2016, (for short 'the Bankruptcy Code') to commence insolvency resolution process against the petitioner. Petitioner sought time on various dates to explore possibility of settling the issue and to file statement of objections. After granting several adjournments, the NCLT has passed the impugned order on 17.12.2019 appointing Shri Ravindranath N, as Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process. Feeling aggrieved by the said order, petitioner is before this Court.

8. This Court has granted an interim order on 12.06.2020. On the subsequent dates, i.e., on 16.06.2020, 18.06.2020, 19.06.2020, 25.06.2020, 02.07.2020, 09.07.2020, 16.07.2020, 20.07.2020 and 22.07.2020 time was sought to explore possibility of settlement but there was no settlement and the petition was finally heard on 25.08.2020.

9. Shri Holla mainly urged following contentions in support of this petition:

- that though petitioner made sincere efforts, he could not make any deposit either before NCLT or before this Court;
- that sufficient opportunity was not given by the NCLT to file counter; and
- that NCLT could not have admitted the matter since as on the date of presentation of the application under Section 7 of the Bankruptcy Code, the debt was time barred. Therefore, alternative remedy is not a bar.

10. On the issue of alternative remedy, Shri Holla submitted that since admitting the application in respect of a time barred debt is a jurisdictional issue, alternative remedy is not a bar to entertain this writ petition. In support of

this contention, he relied upon **WHIRLPOOL CORPORATION VS. REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS¹**. He also relied upon **GAURAV HARGOVINDBHAI DAVE VS. ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED AND ANOTHER²** in support of his contention with regard to 'time barred debt'.

11. Shri M.Jagadeesh, learned advocate for respondent argued opposing the petition contending: firstly, that the petition by an erstwhile Director of the Company is not maintainable; and secondly, that petitioner's conduct before NCLT as also before this Court must disentitle it from any discretionary relief.

12. I have carefully considered rival contentions and perused the records.

¹ (1998) 8 SCC 1

² (2019) 10 SCC 572

13. Undisputed facts of the case are, respondent has presented its application under Section 7 of the Bankruptcy Code on 20.08.2019. Perusal of NCLT's order shows that the application was adjourned 13 times at the instance of petitioner on the ground of exploring possibility of settlement. The relevant paragraph of NCLT's order reads as follows:

“4. The case is listed for admission on various dates viz., 03.09.2019, 13.09.2019, 26.09.2019, 17.10.2019, 08.11.2019, 13.11.2019, 25.11.2019, 27.11.2019, 05.12.2019, 06.12.2019, 10.12.2019, 16.12.2019 and 17.12.2019, and it was adjourned on those dates, the request of the learned Counsel for the Respondent to explore the possibility of settling the issue, to file statement of objections, etc. However, no reply has been filed and also none appeared for the Respondent on several dates except on few occasions, that too, junior Counsel seeking only adjournment.”

14. According to the bank, petitioner is liable to repay more than Rs.100 crores. It is pleaded by the petitioner itself that it has obtained loan of Rs.36.93 crores in 2009. Respondent is a bank owned by Government of India. Thus, petitioner holding public money, is making untiring efforts to dodge the recovery proceedings by giving false assurances of exploring possibility of settling the matter. As noted above, NCLT has adjourned the proceedings on 13 occasions. In view of this finding, this Court directed the petitioner to show its bonafides by depositing a portion of admitted debt. Despite giving several opportunities, petitioner has not deposited even one rupee before this Court. This conduct is reprehensible.

15. Shri Holla, urged that application before NCLT is not maintainable because the debt is time barred by placing reliance on **GAURAV HARGOVINDBHAI DAVE**². In the said case, it is

recorded that the Debt Recovery Tribunal had held that Original Applications before it were not maintainable. In contradistinction, in this case, the Original Application filed by the Bank has been decreed by the DRT on 30.06.2016. Thus, the facts in the instant case are different.

16. In the case of **INNOVENTIVE INDUSTRIES LIMITED Vs. ICICI BANK AND ANOTHER**³, relied upon by Shri Jagadeesh, the Hon'ble Supreme Court has held that once the insolvency professional is appointed, the erstwhile Directors who are no longer in Management could not have maintained the appeal before the Supreme Court of India by holding thus:

“11. Having heard the learned counsel for both the parties, we find substance in the plea taken by Shri Salve that the present appeal at the behest of the erstwhile Directors of the appellant is not

³ (2018) 1 SCC 407)

maintainable. Dr. Singhvi stated that this is a technical point and he could move an application to amend the cause title stating that the erstwhile Directors do not represent the Company, but are filing the appeal as persons aggrieved by the impugned order as their management right of the Company has been taken away and as they are otherwise affected as shareholders of the Company. According to us, once an insolvency professional is appointed to manage the Company, the erstwhile Directors who are no longer in management, obviously cannot maintain an appeal on behalf of the Company. In the present case, the Company is the sole appellant. This being the case, the present appeal is obviously not maintainable. However, we are not inclined to dismiss the appeal on this score alone. Having heard both the learned counsel at some length, and because this is the very first application that has been moved under the Code, we thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts.

(emphasis supplied)

17. So far as the grounds pleaded in the writ petition are concerned, the petitioner has, in

substance, pleaded that the case was posted before the NCLT for settlement and that opportunity was not provided to the petitioner to file statement of objections. This ground is untenable because petitioner has taken 13 adjournments before NCLT and its conduct is no better before this Court.

18. Thus, petitioner's repeated requests for adjournments before NCLT was made with assurances of settlement. An assurance is a 'promise' and stands on higher footing than an order passed Tribunals or Courts because promises or undertakings are given voluntarily whereas orders are imposed with authority. Courts believe the party making promise and grant relief. Breach of undertaking is a serious matter. In order to test the bonafides and to give further opportunity, this Court repeatedly called upon the petitioner to deposit a portion of admitted debt in this Court and granted time by adjourning the

matter on several dates. Petitioner who is liable to repay more than Rs.100 crores of public money, has remained steadfast 'not to pay' any money.

19. Hence, this writ petition is liable to be rejected for more than one reason. Firstly, the petition is not maintainable as it has been filed by the petitioner-Company represented by its erstwhile Director; secondly, petitioner has given false assurance with regard to settlement before the NCLT and this Court on several dates of hearing and thirdly, the impugned order is an appealable order.

20. In ***PRESTIGE LIGHTS LTD., VS. STATE BANK OF INDIA***⁴, it is held that an order passed by competent court -interim or final - has to be obeyed without any reservation. If such order is disobeyed, court may refuse the party violating such order to hear him on merits. In that case,

⁴ (2007) 8 SCC 449

the order of the Court was not complied with by the petitioner therein. In this case, petitioner has given repeated assurances but not fulfilled them.

21. Therefore, in the facts and circumstances of this case, keeping in view the conduct of the petitioner and the law laid down in ***INNOVENTIVE INDUSTRIES LIMITED***³, in the opinion of this Court, petitioner is not entitled for the discretionary relief under Article 226 of the Constitution of India.

22. In the result, this petition must fail and is accordingly dismissed with costs of Rupees One lakh.

**Sd/-
JUDGE**

Jm/-