

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.12957 of 2021

M/s.Kotak Mahindra Bank Ltd
No.401 L, 5th Floor, Samson Towers
Pantheon Road, Egmore
Chennai- 600 008
Rep. by its Senior Vice President. .. Petitioner

Vs.

- 1 K.Bharathi
- 2 Green Gardens Private Limited
Having its registered office at
No.60, Mount Road
Chennai- 600 006.
- 3 Gemini Arts Private Limited
Having its registered office at
No.60, Mount Road
Chennai- 600 006.
- 4 Sripriya Kumar
- 5 T.V.Balasubramaniam

6 A.Manohar Prasad
rep. by the Official Assignee
Promoter- Green Garden Private Limited
and Gemini Arts Private Limited
I Floor, Family Court Building
High Court Complex
Madras High Court, Chennai. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the Honble National Company Law Tribunal - II, Chennai to dispose of the Application filed by the petitioner in MA No.538 of 2019 in CP No. 710 of 2018 filed under Section 60(5) of the Insolvency and Bankruptcy Code.

For Petitioner : Mr.E.Omprakash, S.C.
For Mr.Ilayaraja Perumal

For Respondents : Mr.P.S.Raman, S.C.
For M/s. Aparajitha Viswanath
for respondent-1

Not ready in Notice - R2

Ms.G.M.Oviya
For Mr.Thiyambak J.Kannan
for respondents 3 and 5

Mrs.V.Uma
Official Assignee
Mr.M.Vasantha Kumar
Dy. Official Assignee
for respondent-6

ORDER

(Made by the Hon'ble Chief Justice)

The writ petition is directed against an order dated March 26, 2021 passed by the National Company Law Tribunal, Chennai, though the prayer is couched somewhat differently and a direction has been sought on the tribunal to proceed with a matter pending before it.

2. The petitioner claims to be a financial creditor of the corporate debtor in the NCLT proceedings and there is a dispute between the petitioner and the first respondent herein. The first respondent herein, according to the petitioner, is the mother-in-law of the sixth respondent, who is said to be the principal promoter and the human agency in control of the second respondent corporate debtor.

3. Ms.G.M.Oviya, learned counsel, appears for the third and fifth respondents and supports the petitioner herein.

4. It appears that in proceedings in this court to which the petitioner herein was not a party, the charge created in respect of a property in favour of the petitioner herein by the corporate debtor was

called into question and some observations made by a Single Bench. An appeal has been preferred by the first respondent herein from the relevant order to question the order of the Single Bench, including the said observations. The first respondent is represented by Mr.P.S.Raman, learned senior counsel, who says that it is her right to have the order passed by the Single Bench set aside and if the NCLT decides the matter before it on the basis of the observations of the Single Bench, the first respondent may be seriously prejudiced thereby. It is the further submission of the first respondent that the NCLT has adjourned the matter till August 26, 2021 and what the first respondent proposes to contend before the NCLT is that it would be improper to proceed with the NCLT proceedings without the appeal preferred by the first respondent being disposed of.

5. In the order dated March 26, 2021 passed by the NCLT, the following observation is made in the penultimate paragraph thereof:

“The Insolvency and Bankruptcy Code, 2016 (IBC) is time bound. ... The complexities in this matter and pending litigations before various courts have been major impediment in conducting CIRP. Since the matter is pending before the Division Bench of the Hon'ble High Court of Madras, all the parties shall

place this matter before Hon'ble High Court for direction whether this Adjudicating Authority can proceed as per IBC Rules and Regulations and what shall be the fate of CP/709/2018 pending on the file of this Adjudicating Authority.”

6. Quite obviously, the NCLT, Chennai has sought to pass the buck. The order may also seem to be irreverent and verging on the contumacious to remind this court that while the NCLT functions on a time bound basis, the time element may not apply to court proceedings. To such extent, the NCLT may do well to stay within the bounds of its authority and adhere to the limits of propriety in conformity with the superior authority that this court exercises. It is for the NCLT to decide whether the matter before it ought to be decided or not, whether any injunction operates or impedes the progress of the matter before it and the parties cannot be asked to approach this Court for this Court to hand-hold the NCLT and guide it through its proceedings. Indeed, the order and the part thereof extracted above betrays the total non-application of mind in that all the parties before the NCLT were not, and could not have been, parties to the proceedings pending before the Division Bench of this Court and, to such extent, the parties before the NCLT, who are not parties

to the proceedings pending in this court, could not have been left to the vagaries of a matter to which they were not parties.

7. The NCLT would do well to confine itself to its area of specialisation and deal with the matter in accordance with law without waiting for any advice or assistance from this Court which this Court, in any event, is not obliged to extend.

W.P.No.12957 of 2021 is disposed of with the above observations. There will be no order as to costs.

(S.B., CJ.)

(P.D.A., J.)

05.08.2021

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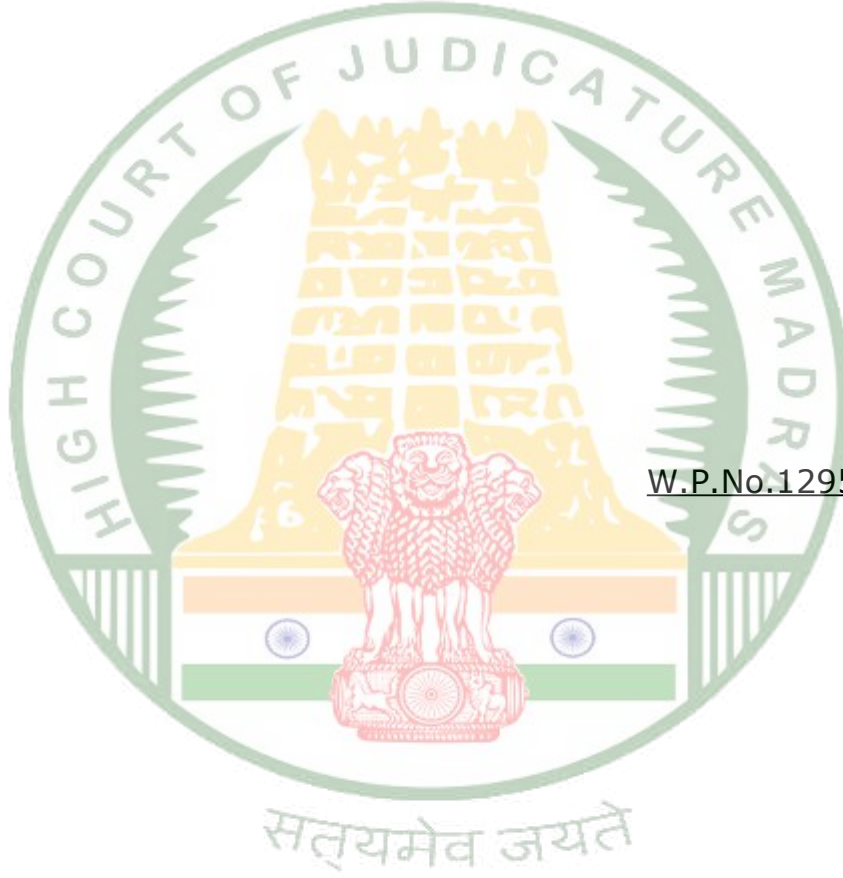
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W.P.No.12957 of 2021

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

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