

## 'Fraud Allegations' within the Jurisdiction of NCLT; Public Law beyond its Realm, Rules the Supreme Court!

written by Richa K Gaurav | January 9, 2020



The Hon'ble Supreme Court bench comprising of Justice Rohinton Fali Nariman, Justice Anirudhha Bose and Justice V. Ramasubramanian in the judgement dated December 3, 2019, in the matter titled 'M/s

*Embassy Property Developments Pvt. Ltd. versus State of Karnataka & Ors.*<sup>[1]</sup>

held that National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT")

are empowered to enquire into the allegations of fraud, however, it is *corum non judio* to adjudicate upon a matter

that falls in the realm of public law or revolve around the decisions passed by

statutory or quasi-judicial authorities.

### Facts

A company namely M/s Udhayaman Investments Pvt. Ltd. claiming to be a Financial Creditor filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") against M/s Tiffins Barytes Asbestos & Paints Ltd. ("Corporate Debtor") before NCLT, Chennai. The application got admitted and vide order dated March 12, 2018, Corporate Insolvency Resolution Process ("CIRP") commenced, an Interim Resolution Professional ("IRP") was appointed and a moratorium was declared as warranted by Section 14 of the IBC, 2016. At that point of time, the Corporate Debtor held a mining license valid up to May 25, 2018 granted by the Government of Karnataka. Due to allegations of violation of statutory rules and the terms and conditions of the lease, premature-termination notice dated August 9, 2017 was issued, however, no termination order was passed till the date of commencement of CIRP.

The IRP vide letter dated April 21, 2018, addressed to the Director of Mines and Geology, sought the benefit of deemed extension of the lease beyond May 25, 2018 till March 31, 2020 in terms of Section 8-A (6) of the Mines and Minerals (Development and Regulation) Act,

1957 (MMDR Act, 1957"). As the said letter met with no response, IRP invoked writ jurisdiction of the High Court of Karnataka and sought a declaration

of extension of the mining lease. During the pendency of the writ, the Government of Karnataka vide order dated September 26, 2018, rejected the proposal of deemed extension. Resultantly, the writ petition was withdrawn with a liberty to file afresh and the rejection order was challenged before the NCLT, Chennai.

NCLT, Chennai while proceeding *ex-parte* as the State despite service of the Notice failed to appear, was pleased to set aside the rejection order being violative of moratorium. It further directed the Government of Karnataka to execute Supplement Lease Deeds in favour of the

Corporate Debtor till March 31, 2020. The said order was challenged by the State

of Karnataka before the High Court of Karnataka that set aside the order passed

by NCLT, Chennai and remanded the matter for fresh consideration. Before the NCLT, Chennai the State of Karnataka contended that NCLT lacks jurisdiction to

adjudicate upon the matter qua grant of mining leases under the MMDR Act, 1957

and that the entire resolution process was initiated fraudulently and in collusion by the related parties of Corporate Debtor to corner the benefits of

the mining lease. The NCLT, Chennai vide order dated May 3, 2019 set aside the

rejection order and directed the Government of Karnataka to execute Supplemental Lease Deeds.

Aggrieved and dissatisfied by the

aforsaid orders of NCLT, Chennai, the Government of Karnataka invoked writ jurisdiction of the High Court of Karnataka. During the admission hearing, the

Corporate Debtor was represented by the Resolution Professional ("RP") who appeared through a counsel,

took notice and sought time to seek instructions. Subsequently, the RP filed a

contempt application before the NCLT, Chennai against the Government of Karnataka as they failed to execute Supplement Lease Deeds. Resultantly, the High Court adjourned the matter and stayed the operation of the orders passed by NCLT, Chennai.

The said ad Interim Order passed by the High Court was appealed by the Resolution Applicant, the Resolution Professional and the Committee of Creditors ("CoC") before the Hon'ble

Apex Court.

Issues

The Hon'ble

Supreme Court adjudicated upon the following seminal questions of importance:

1. Whether and under what circumstances, the High Court is empowered under Article 226/227 of the Constitution to intervene in the order passed by NCLT in the proceedings initiated under IBC, 2016, ignoring the statutory remedy of appeal to National Company Law Appellate Tribunal [NCLAT]?

2. Whether NCLT/NCLAT is empowered to enquire and adjudicate upon the question of fraud in the proceedings initiated under the IBC, 2016?

#### Submissions

Learned Senior Counsel appearing on behalf of the appellants assailed the impugned order on the ground that the High Court of Karnataka should not have entertained a writ petition against the orders of NCLT, Chennai as the grievances ought to have been addressed to and redressed by the statutory forum under the remedy available under Section of 61 of IBC, 2016. It

was further contended that IRP/Resolution Professional was well within its right to move to the NCLT for appropriate reliefs for the preservation of properties of Corporate Debtor as the essence of IBC, 2016 is the revival of a corporate debtor and resolution of its problems to enable it to survive as a going concern through the maximization of the value of assets.

Learned Senior Counsel for the appellant further submitted that the High Court ought not to tinker with or destroy the very Resolution Plan approved by NCLT. Moreover, the whole purpose

of IBC, 2016 would get defeated if the orders passed by NCLT begin to fall under the purview of review by the High Court under Article 226/227 of the Constitution as it would derail the entire time-bound process. It was also submitted that section 3(27) of the IBC, 2016 defines the term '*property*' and includes every description of interest including present/future/vested/contingent arising out of or incidental to property. Hence,

right to deemed extension of lease would fall within the ambit of '*property*' and the Resolution Professional has duty to preserve the property and maintain

status quo during period of moratorium. It was also submitted that the NCLT is empowered to enquire into the allegations of fraud.

On the contrary, learned Attorney General

Sh. K.K. Venugopal submitted that the jurisdiction of NCLT is confined only to

contractual matters inter-parties and orders passed by statutory/quasi-judicial

authority under special enactments like MMDR Act, 1957 fall under the realm of

public law, because of which NCLT lacks authority and power to judicially review such orders. He placed reliance on Barnard

and Others versus National Dock Labour Board and Others[2]

to submit that when the order passed by an inferior tribunal is *null and void*, the superior court need

not direct the party to approach the appellate forum stipulated by the act. Judgment

The Hon'ble Supreme Court while

deciding upon the issue laid reliance upon M/s

Innoventive Industries Limited versus ICICI Bank[3]

and stated that IBC, 2016 is an exhaustive code on the subject matter of

insolvency w.r.t. corporate entities and others and it is beyond any doubt that IBC, 2016 is a time-bound and the single unified code encompassing the entire gamut of insolvency resolution law. The Hon'ble Bench observed that MMDR Act, 1957 is a parliamentary enactment (Entry 54, Union List, Seventh Schedule) that declares that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals[4], hence, the same falls under the realm of public law. Consequently, Hon'ble apex court held that correctness of any decision touching upon public law domain can be challenged only before a superior court vested with the power of judicial review over administrative action. The apex court observed that High Courts must distinguish between the lack of jurisdiction and wrongful exercise of jurisdiction when Article 226 is sought to be invoked by passing an alternative remedy provided by the special statute. As the NCLT has been created by a special statute to discharge specific functions, it cannot be elevated to the status of a superior court that has the power of judicial review over administrative action. Hence, as NCLT was *corum non judice* and it exercised jurisdiction not vested by law, the High Court of Karnataka was justified in entertaining the writ petition. The Hon'ble Bench further held that the collective reading of Section 65, 66 and 69 of IBC, 2016 makes it abundantly clear that the NCLT is vested with the powers to inquire into fraudulent initiation of proceedings and fraudulent transactions. Furthermore, the act envisages punishment and penalties for a Corporate Debtor for carrying on transactions with a view to defraud creditors.

**Conclusion**

In the final analysis, it can be rightly concluded that though IBC, 2016 and MMDR Act, 1957 are special enactments to achieve the aim of greater good but public interest is of paramount importance. The Hon'ble Supreme Court put to rest all the speculations and has rightly held that NCLT can only adjudicate upon the issues that squarely falls within the ambit of its jurisdiction, as the Corporate Debtor cannot be all allowed to circumvent the law to claim rights and reliefs in judicial and quasi-judicial proceedings by bringing a claim before NCLT as at times, disputes qua decisions of statutory or quasi-judicial authorities warrants judicial review of the administrative action.

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- [1] Civil Appeal No. 9170 of 2019
  - [2] (1953) 2 WLR 995
  - [3] AIR 2017 SC 4084

- [\[4\]](#) Section 2 MMDR Act, 1957  
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