

SUPREME COURT OF INDIA

S. ABDUL NAZEER, J. SANJIV KHANNA, J.

Bank Of India v. Maxim Infrastructure And Real Estate Pvt. Ltd

CIVIL APPEAL NO. 379 OF 2020 (ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2980 OF 2019)

10.01.2020

Constitution of India , Article 226 - ‘error of jurisdiction’ - Discretionary exercise of jurisdiction by the High Courts under Article 226(1) - The expression ‘error of jurisdiction’ in the broad context would include errors of law committed by the Tribunals/administrative authorities within their jurisdiction - However, this would not be relevant when Article 226 of the Constitution is sought to be invoked for bypassing and overlooking the statutory alternative remedy provided by a special statute - The present case is much worse for the respondent had invoked the writ jurisdiction even before raising the aforesaid contention and issue before the Tribunal where the insolvency proceedings are pending - The respondents had acted with impetuosity in approaching the High Court when the contention could be raised and decided by the Tribunal having exclusive jurisdiction - Insolvency and Bankruptcy Code, 2016.

ORDER

Leave granted.

2. In spite of service, respondent No.1 – M/s. Maxim Infrastructure & Real Estate Pvt. Ltd., and respondent No.2 – Prithu Jhunjhunwala, have not entered appearance to contest the present appeal. Accordingly, we have heard learned counsel for Bank of India, the appellant in this appeal, which challenges the order dated 6 th September 2018 passed in CRP No. 13 of 2018 whereby the learned Single Judge was pleased to stay operation of the order dated 31st August 2018 passed in CP(IB)/04/GB/2018 by the National Company Law Tribunal, Guwahati Bench (‘Tribunal’, for short). Operation of the impugned order dated 6 th September 2018 was stayed by this Court vide order dated 25 th January 2019. Learned counsel for the appellant Bank has informed us that the Tribunal has accordingly proceeded to hear the insolvency petition against the first respondent and appropriate orders have been passed.

3. Be that as it may, we are inclined to dispose of the present appeal by confirming the interim order staying the operation of the order dated 6 th September 2018 passed by the High Court of Meghalaya at Shillong in CRP No. 13 of 2018 by recording that the respondents are entitled to raise all questions and contentions relating to validity of the letter of authorisation dated 26th June 2018 and Board Resolution dated 6 th December 2017 before the Tribunal, in accordance with law. These aspects do not ex facie relate to and disclose inherent lack of jurisdiction of the Tribunal but at best would relate to exercise

of jurisdiction by the Tribunal in a petition filed by the appellant Bank on the basis of the letter of authorisation dated 26th June 2018 and Board Resolution dated 6 th December 2017. Hence, the writ petition should not have been entertained as the respondents are entitled to raise these aspects and it would be for the Tribunal to consider and decide.

4. This Court in **M/s. Innoventive Industries Limited v. ICICI Bank**, (2018) 1 SCC 407 , has held that the Insolvency and Bankruptcy Code, 2016 ('Code', for short) is an exhaustive and a complete code, covering the entire gamut of law relating to insolvency resolution of corporate persons and others in a time bound manner. Orders under the Code are amenable to challenge in appeal before the National Company Law Appellate Tribunal under Section 61 of the Code and then before this Court.

5. We have no doubt in our mind that the High Court should not have passed the interim order in view of the pending proceedings and remedies provided in the Code itself which are adequate and fair. Recently, a three Judge Bench of this Court in **M/s. Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.** (Civil Appeal No. 9170 of 2019 decided on 3rd December 2019 Civil Appeal arising out of SLP (C) No.2980 of 2019) had examined the question of discretionary exercise of jurisdiction by the High Courts under Article 226(1) of the Constitution to observe that the expression 'error of jurisdiction' in the broad context would include errors of law committed by the Tribunals/administrative authorities within their jurisdiction. However, this would not be relevant when Article 226 of the Constitution is sought to be invoked for bypassing and overlooking the statutory alternative remedy provided by a special statute. The present case is much worse for the first respondent had invoked the writ jurisdiction even before raising the aforesaid contention and issue before the Tribunal where the insolvency proceedings are pending. The respondents had acted with impetuosity in approaching the High Court when the contention could be raised and decided by the Tribunal having exclusive jurisdiction.

6. In view of the aforesaid, we would allow the present appeal and set aside the direction given in the impugned order dated 6 th September 2018 passed by the High Court of Meghalaya, Shillong in CRP No. 13 of 2018 staying the further proceedings before the Tribunal in CP(IB)/04/GB/2018. We would clarify that we have not commented on the merits of the case and all contentions and issues, except the one decided in the present appeal, are left open.

7. In the facts of the case, there would be no order as to costs.