

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 2ND DAY OF JULY 2021 / 11TH ASHADHA, 1943

WP(C) NO. 8257 OF 2021

PETITIONER/S:

IDEAL SURGICALS
NJARACKAL HOUSE, PRIYADARSHINI NAGAR,
KONTHURUTHY, THEVARA-682 013, REPRESENTED BY ITS
MANAGING PARTNER ABIN ANTU MATHEW.

BY ADVS.

G.HARIKUMAR (GOPINATHAN NAIR)

SHRI.AKHIL SURESH

RESPONDENT/S:

- 1 NATIONAL COMPANY LAW TRIBUNAL
COMPANY LAW BHAVAN BMC ROAD, THRIKKAKARA P.S.
KAKKANAD, KOCHI-682 021, REPRESENTED BY ASSISTANT
REGISTRAR.
- 2 BIJOY PRABHAKARAN PULIPRA,
RESOLUTION PROFESSIONAL PVS MEMORIAL HOSPITAL
PRIVATE LIMITED, GROUND FLOOR, TC 11/798(1),
VAYAL ROAD, NANDANCODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM.
- 3 LISSIE MEDICAL INSTITUTIONS
LISSIE HOSPITAL, ERNAKULAM-682 018, REPRESENTED
BY ITS MANAGING DIRECTOR.
- 4 PVS MEMORIAL HOSPITAL,
BANERJI ROAD, OPP.GOKULAM PARK, KALoor,
ERNAKULAM, KERALA-682 017, REPRESENTED BY ITS
MANAGING DIRECTOR.
- 5 ADDL.R5 LIC HOUSING FINANCE LIMITED,
HAVING ITS BACK OFFICE AT 9TH FLOOR, JEEVAN
PRAKASH BUILDING, M.G. ROAD, ERNAKULAM-682011,
REPRESENTED BY ITS AUTHORIZED SIGNATORY AND AREA
MANAGER, MR. ANEESH PANIKKASSERY, S/O.
CHANDRASEKHARAN P.K., AGED 42 YEARS, RESIDING AT
FLAT NO.A1, YASORAM PRASEEDA APARTMENTS, GANDHI
NAGAR, KADAVANTHRA ROAD, ERNAKULAM-682020.

(ADDITIONAL R5 IS IMPEADED AS PER ORDER DATED
31/05/2021 IN IA NO.1/2021)

BY ADVS.
SHRI.P.VIJAYAKUMAR, ASG OF INDIA
K.LATHA
PRADEEP JOY
S.SREEKUMAR (SR.)
MILLU DANDAPANI
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
ANNA LINDA V.J
AJAY BEN JOSE
MANJUNATH MENON
R.GITESH
P.H.ARVINDH PANDIAN (SR.)

OTHER PRESENT:

ASG-SRI.P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.06.2021 ALONG WITH WPC 11233 & 12125/2021, THE COURT ON
02.07.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 2ND DAY OF JULY 2021 / 11TH ASHADHA, 1943

WP(C) NO. 11233 OF 2021

PETITIONER/S:

PACE BIOMEDICAL
35/735 A, PALARIVATTOM P.O., KOCHI 682 025, REP.
BY ITS PROPRIETOR MATHEW THOMAS
BY ADV G.HARIKUMAR (GOPINATHAN NAIR)

RESPONDENT/S:

- 1 NATIONAL COMPANY LAW TRIBUNAL
COMPANY LAW BHAVAN BMC ROAD, THRIKKAKARA P.S.
KAKKANAD, KOCHI 682 021
REP. BY ASSISTANT REGITRAR
- 2 BIJOY PRABHAKARAN PULIPRA
RESOLUTION PROFESSIONAL PVS MEMORAIAL HOSPITAL,
PRIVATE LIMITED, GROUND FLOOR, TC 11/798(1),
VAYAL ROAD, NANDANCODE, KOWDIAR P.O.,
THIRUVANANTHAPURAM 695 004.
- 3 LISSIE MEDICAL INSTITUTIONS
LISSIE HOSPITAL, ERNAKULAM 682 018
REP. BY ITS MANAGING DIRECTOR
- 4 PVS MEMORIAL HOSPITAL
BANERJI RD, OPP GOKULAM PARK, KALOOR, ERNAKULAM-
KERALA 682 017
REP. BY ITS MANAGING DIRECTOR.
- 5 ADDL. R5 LIC HOUSING FINANCE LIMITED
HAVING ITS BACK OFFICE AT 9TH FLOOR, JEEVAN
PRAKASH BUILDING, M.G.ROAD, ERNAKULAM-682 011.
REPRESENTED BY ITS AUTHORIZED SIGNATORY AND AREA

MANAGER, MR. ANEESH PANIKKASSERY, S/O
CHANDRASEKHARAN P.K, AGED 42 YEARS, RESIDING AT
FLAT NO A1, YASORAM PRASEEDA APARTMENTS, GANDHI
NAGAR, KADAVANTHRA ROAD, ERNAKULAM-682 020 (IS
IMPLEADED AS ADDITIONAL 5TH RESPONDENT AS PER
ORDER DATED 31.5.21 IN IA NO. 1/21 IN WPC
NO.11233/21)

BY ADVS.
K.LATHA
PRADEEP JOY
S.SREEKUMAR (SR.)
MILLU DANDAPANI
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
ANNA LINDA V.J
MANJUNATH MENON
P.H.ARVINDH PANDIAN (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.06.2021 ALONG WITH WPC 8257 & 12125/2021, THE COURT ON
02.07.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 2ND DAY OF JULY 2021 / 11TH ASHADHA, 1943

WP(C) NO. 12125 OF 2021

PETITIONER/S:

- 1 M/S. ORLEM PHARMA PVT. LTD
REPRESENTED BY ITS DIRECTOR, MR.SIMON JOHN, DOOR
NO.37/64, DD MILESTONE, KADAVANTHRA, COCHIN - 682
020.
- 2 ST.ANTONYS MEDICAL DISTRIBUTORS
REPRESENTED BY ITS PROPRIETOR, MRS.SNEHA ABRAHAM,
DOOR NO.64/162A, NEAR LISSIE HOSPITAL, KALoor,
COCHIN - 682 018.
BY ADV P.JINISH PAUL

RESPONDENT/S:

- 1 NATIONAL COMPANY LAW TRIBUNAL
COMPANY LAW BHAVAN, BMC ROAD, KAKKANAD, KOCHI -
682 021, REP. BY ITS ASSISTANT REGISTRAR.
- 2 LISSIE MEDICAL INSTITUTIONS
LISSIE HOSPITAL, ERNAKULAM - 682 018, REP. BY ITS
MANAGING DIRECTOR.
- 3 PVS MEMORIAL HOSPITAL PVT.LTD.
NO.XXIV/1484, KALoor, ERNAKULAM, KERALA - 682
017, REP. BY ITS MANAGING DIRECTOR.
BY ADVS.
S.KRISHNAN
K.LATHA
PRADEEP JOY
S.SREEKUMAR (SR.)
MILLU DANDAPANI
P.MARTIN JOSE

W.P. (C) No.8257/2021 & con.cases

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P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
ANNA LINDA V.J
MANJUNATH MENON
P.H.ARVINDEH PANDIAN (SR.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.06.2021 ALONG WITH WPC 11233 & 8257/2021, THE COURT ON
02.07.2021 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 2nd day of July, 2021

[W.P.(C) Nos. 8257, 11233 & 12125 of 2021]

The challenge in these original petitions is against the proceedings of the National Company Law Tribunal (NCLT), Kochi Bench. The essential facts are as under; For the sake of convenience, the parties and the Exhibits are referred to, as described in W.P.(C) No.8257 of 2021;

The proceedings under challenge pertains to the Corporate Insolvency Resolution Process initiated under the Insolvency and Bankruptcy Code, 2016 ('the Code' for short) with respect to the 4th respondent; Corporate Debtor. The proceedings commenced at the instance of two Operational Creditors. Ext.P1 order was issued by the NCLT appointing the second respondent as

Interim Resolution Professional (IRP). The IRP was reappointed as the Resolution Professional (RP) by the members of the Committee of Creditors. In accordance with the procedure prescribed by the Code, application under Sections 30(6) and 31(1) was filed by the RP, seeking approval of the Resolution Plan submitted by the third respondent; Resolution Applicant. By Ext.P2 order dated 22.02.2021, the NCLT approved the Resolution Plan and made it effective from the date of order. Being aggrieved by Ext.P2 order, the petitioners, who are Operational Creditors, preferred appeals before the National Company Law Appellate Tribunal (NCLAT). These writ petitions are filed on the premise that the appeals and stay petitions are not being taken up by the NCLAT. While admitting the writ petition, this Court granted an interim stay of further proceedings pursuant to Ext.P2

order.

2. The third respondent and the additional 5th respondent has challenged the very maintainability of the writ petition.

3. I heard Advocates Akhil Suresh and Jinish Paul appearing for the petitioners, Senior Advocates Sri.P.H.Arvinth Pandian, Sri.S.Sreekumar appearing for the contesting respondents, Sri.Millu Dandapani for the Corporate Debtor, Smt.K.Latha for the Resolution Professional and Smt.S.Krishna, learned Counsel representing the ASG.

4. The maintainability of the writ petitions is challenged on the ground that the petitioners have an effective alternative remedy of appeal under Section 61 of the Code. In support of this contention, reliance is placed on the Division Bench decision of this Court in Sulochana Gupta

and others v. RBG Enterprises Pvt. Ltd and others

(judgment in W.A.No.1083 of 2020). The averment in the writ petitions that the appeals are not being taken up, as the NCLAT is on leave, is refuted. According to the learned Senior Counsel, the appeals are defective and will be taken up only after the defects are cured. It is pointed out that the NCLAT is functioning and the appeals filed by other Operational Creditors against Ext.P2 order had come up for admission. However, no stay or even *status quo* order was granted. It is contended that interference by the High Court, in exercise of jurisdiction under Article 226 of the Constitution, will defeat the very objective of the Code, which has been enacted with a view to consolidate and amend the law relating to insolvency resolution. Attention is drawn to the observations of the Honourable Supreme Court in

Swiss Ribbons Pvt.Ltd and another v. Union of India and others [(2019) 4 SCC 17] and Ghanashyam Mishra and Sons Private Ltd v. Edelweiss Asset Reconstruction Company [2021 SCC Online SC 313] to contend that the IBC, 2016 being a self contained Code, the High Courts should refrain from interfering with the resolution process.

5. Learned Counsel for the petitioners submitted that their appeals have been accepted by the NCLAT, but are yet to be numbered and posted for admission. In the meanwhile, if the resolution process is continued in accordance with Ext.P2 order, the appeals will be rendered infructuous. In such circumstances, the High Court can, in the interest of justice, exercise its jurisdiction under Article 226 to safeguard the interest of the petitioners, till the appeals are taken up for consideration. Ext.P3 is pointed out to be an

interim order granted by this Court under similar circumstances.

6. Learned Counsel for the 4th respondent supported the submissions made on behalf of the petitioners and contended that Ext.P2 order is patently illegal. That, hasty steps are being taken to give effect to the order before the appeals are taken up for hearing and that, implementation of the Resolution Plan will cause serious prejudice to the Corporate Debtor and its creditors.

7. As observed by the Apex Court in M/s. Innoventive Industries Ltd v. ICICI Bank [AIR 2017 SC 4084], the IBC, 2016 is a Single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time bound manner. The code provides a three-tier mechanism namely, (i)

the NCLT, which is the adjudicating authority (ii) the NCLAT, which is the appellate authority (iii) the Supreme Court, which is the final authority, for dealing with all issues that may arise in relation to the re-organisation and insolvency resolution of corporate persons. An order passed by the NCLT is appealable to the NCLAT under Section 61 of the Code and the orders of the NCLAT are amenable to the appellate jurisdiction of the Supreme Court under Section 62.

8. In Swiss Ribbons Pvt.Ltd (supra), the Honourable Supreme Court, while rejecting the challenge against certain provisions of the code held as under:

"The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated 'errors', ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities

and inequities that have been pointed out by the petitioners, passes constitutional muster."

9. One of the issues that arose for consideration before the Division Bench in Sulochana Gupta, was the maintainability of the writ petition under Article 226 against an order of the NCLT. The Division Bench, after elaborate survey of precedents, answered the issue by holding that the writ petition to be not maintainable.

In view of the exposition of the Honourable Supreme Court regarding the objective of the Code and the authoritative pronouncement of the Division Bench, with which I am in respectful agreement, the writ petitions are dismissed.

Sd/-

V.G.ARUN
JUDGE

APPENDIX OF WP(C) 8257/2021

PETITIONER ANNEXURE

EXHIBIT P1 A TRUE COPY OF THE ORDER DATED
16.10.2019 IN TIBA/11/KOB/2019
IBA/28/KOB/2019.

EXHIBIT P2 A TRUE COPY OF THE ORDER OF THE
NATIONAL COMPANY LAW TRIBUNAL DATED
22.02.2021.

EXHIBIT P3 A TRUE COPY OF THE ORDER OF THIS
HON'BLE COURT IN WP(C) NO.6476/2021
DATED 15.03.2021.

RESPONDENT'S EXHIBITS

ANNEXURE A TRUE COPY OF MINUTES OF THE 27TH
CoC Meeting held on 26.12.2020

ANNEXURE B TRUE COPY OF ORDER
No.IA(IBC)/61/KOB/2021 IN
IA(IBC)/61/KOB/2021 IN
IA(IBC)/13/KOB/2021 IN
TIBA/11/KOB/2019 DATED
16.03.2021 OF NCLT

APPENDIX OF WP (C) 11233/2021

PETITIONER ANNEXURE

- EXHIBIT P1 A TRUE COPY OF THE ORDER DATED
16.10.2019 IN TIBA/11/KOB/2019 AND
IBA/28/KOB/2019.
- Exhibit P2 A TRUE COPY OF THE ORDER OF THE
NATIONAL COMPANY LAW TRIBUNAL DATED
22.2.2021
- Exhibit P3 A TRUE COPY OF THE ORDER OF THIS HONBLE
COURT IN WPC NO 6476/2021 DATED
15.3.2021
- Exhibit P4 A TRUE COPY OF THE ORDER OF THIS HONBLE
COURT IN WPC NO 8257/2021 DATED
30.3.2021

RESPONDENTS
EXHIBITS

- ANNEXURE A TRUE COPY OF MINUTES OF THE 27TH COC
MEETING HELD ON 26.12.2020

- ANNEXURE B TRUE COPY OF ORDER
No.IA(IBC)/61/KOB/2021 IN
IA(IBC)/61/KOB/2021 IN
IA(IBC)/13/KOB/2021 IN
TIBA/11/KOB/2019 DATED
16.03.2021 OF NCLT

APPENDIX OF WP (C) 12125/2021

PETITIONER ANNEXURE

- Exhibit P1 THE TRUE COPY OF THE ORDER DATED 22/02/2021 PASSED BY THE 1ST RESPONDENT.
- Exhibit P2 THE TRUE COPY OF THE ONLINE FILING RECEIPT AND DOCKET OF APPEAL SHOWING THE ENTRY OF DIARY NUMBER TO THE APPEAL FILED BY THE 1ST PETITIONER.
- Exhibit P3 THE TRUE COPY OF THE ONLINE FILING RECEIPT AND DOCKET OF APPEAL SHOWING THE ENTRY OF DIARY NUMBER TO THE APPEAL FILED BY THE 2ND PETITIONER.
- Exhibit P4 THE TRUE COPY OF THE ORDER DATED 30/03/2021 IN WPC.8257/2021 ON THE FILES OF THIS HONBLE COURT.