IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

WRIT PETITION NO. 30901 OF 2024 (GM-RES)

BETWEEN:

M/S. SHREE BASAVESHWAR SUGARS LIMITED
A COMPANY INCORPORATED UNDER
COMPANIES ACT, 1956
REPRESENTED BY ITS DIRECTOR
E DHAYALAN
ADMIN OFFICE AT NO 32, 2ND FLOOR
1ST B MAIN ROAD, 8TH B CROSS
B SECTOR, EAR GANAPATHI TEMPLE
YELAHANKA NEW TOWN
BENGALURU-560 064

AND REGISTERED OFFICE AT:
NO.06, MALLIKARJUN BADAVANE
MANAGULI ROAD, GANESH NAGAR
BIJAPUR-586 109, KARNATAKA

...PETITIONER

Digitally signed by PREMCHANDRA M R
Location: HIGH COURT OF KARNATAKA

(BY SRI: C K NANDA KUMAR, SR COUNSEL ALONG WITH
SRI: SHYAM SUNDAR H V, ADVOCATE)

AND:

INDIAN RENEWABLE ENERGY
DEVELOPMENT AGENCY LIMITED
PUBLIC LIMITED GOVERNMENT COMPANY
NON BANKING FINANCIAL INSTITUTION, 1987
REGISTERED OFFICE AT
INDIA HABITAT CENTRE, 1ST FLOOR
EAST COURT CORE 4A, LODHI ROAD
NEW DELHI-110 003
(PUBLIC FINANCIAL INSTITUTION

UNDER SECTION 4A OF COMPANIES ACT, 1956)

…RESPONDENT

(BY SRI: K ARVIND KAMATH, ASG ALONG WITH
SMT:DHANYA KESARI RAO GURPUR, ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 14.11.2024 PASSED BY THE HONBLE NCLT, BANGALORE IN IA (RES) NO.8/2024 IN C.P (IB) NO.37/BB/2022 VIDE ANNEXURE-A AND ETC.,

THIS WRIT PETITION, HAVING BEEN RESERVED FOR ORDERS ON 13.10.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **T.P.VIVEKANANDA J.,** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV ORDER

The petitioner is before this Court challenging the order dated 14.11.2024 passed by the National Company Law Tribunal (NCLT), Bengaluru on IA (Res) No.8 of 2024 in CP(IB) No.37/BB/2022 at Annexure-A.

2. The background of the impugned order passed by the NCLT as per Annexure-A is that, the respondent herein had filed a petition under Section 7 of Insolvency and Bankruptcy Code, 2016 (for short 'the IBC') before NCLT, Bengaluru, which was registered as CP(IB) No.37/BB/2022 for initiation of proceedings of Corporate Insolvency Resolution Process (CIRP) against the petitioner in respect of the debt amounting to INR

178,25,23,894/-. NCLT issued notice of the said proceedings. The petitioner who was the respondent before the NCLT has represented and submitted that the claim of the respondent/petitioner would be settled under OTS. The petitioner proposed a OTS for an amount of INR 117,35,25,151/-, which when accepted by the respondent resulted in approval of the OTS proposal through sanction letter dated 17.11.2023.

3. Parallel to the negotiation of settlement through OTS, the NCLT, Bengaluru passed an order on 10.01.2024 admitting the petitioner into CIRP and appointed an IRP. In view of the fact that against the very same corporate debtor/petitioner, another creditor Viz., Canara Bank had also instituted proceedings under IBC, the petition filed by the respondent came to be disposed of on 11.01.2024 granting liberty to the respondent to file its claim with IRP in CP(IB) No.117/BB/2023 on the ground that there can be no multiple CIRP proceedings against a common corporate debtor. The petitioner herein entered into a settlement under OTS with the Canara Bank, which resulted in the withdrawal of the proceedings in CIRP in CP(IB) No.117/BB/2023 on 16.02.2024. In view of the termination of the proceedings of CIRP in respect

of Canara Bank, the respondent herein could not file its claim before the IRP in CP(IB) No.117/BB/2023.

4. It is the said circumstances, which resulted in the respondent approaching the NCLT seeking recall of the order dated 11.01.2024 and revival of CP(IB) No.37/BB/2022 under Section 60(5) read with Rule 11 of NCLT Rules, 2016. The said IA was numbered as IA(RES) No.8 of 2024 in CP(IB) No.37/BB/2022. The said application was filed on 06.08.2024. The application for revival was opposed by the corporate debtor/petitioner herein contending that the termination of the proceedings between the petitioner and the Canara Bank on 16.02.2024 was within the knowledge of the respondent herein. However, the application for recall/revival was filed after 6 months of withdrawal of CIRP through order dated 16.02.2024. It is their further contention that without there being any liberty in the order dated 11.01.2024 to seek revival of the petition, the application for revival filed by the respondent is not maintainable.

5. Upon consideration of the rival contentions of the petitioner and the respondent herein, who were the parties before NCLT, the Tribunal has passed an order allowing the

application and restoring CP(IB) No.37/BB/2022 to its original file and directing listing of the matter on 20.11.2024. It is the said order, which is under challenge in the present writ petition. This Court had passed an interim order on 19.11.2024 staying the effect of the order dated 14.11.2024 and all further proceedings.

6. The respondent/corporate creditor has filed the application for vacation of the interim order on several grounds. However, principally on the ground that the writ petition is not maintainable, inasmuch as, the petitioner has an alternative and efficacious remedy under Section 61 of the IBC, 2016, which reads as follows:

> ***"61. Appeals and Appellate Authority:-***
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> *(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*
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> *(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*
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> *Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after*

the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against liquidation order passed under Section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order."

7. Apart from contending that the writ petition challenging the order passed by the NCLT is not maintainable, the learned Additional Solicitor General appearing for the respondent submits that the petition filed by the respondent before the NCLT was disposed of permitting the respondent to make a claim in the insolvency proceedings initiated by another corporate creditor, Viz., Canara Bank and there was no adjudication of merits of the claim of the respondent by the NCLT. Neither the respondent nor the NCLT could have predicted that before the respondent could make its claim in the insolvency proceedings initiated by Canara Bank, the petitioner and the Canara Bank would have settled the matter under OTS. It is in the said circumstances, the respondent did not seek liberty to file an application for restoration, if the claim of the respondent is either rejected or not considered for any reason whatsoever. Therefore, the respondent was well within its right to seek revival of the petition filed by it and the NCLT was well within its jurisdiction to entertain the application for restoration/revival.

8. The application for vacating stay was opposed by the petitioner by filing statement of objections contending that,

(i) mere existence of an alternate remedy under Section 61 of IBC, this Court is not precluded from the grant of interim order dated 19.11.2024.

(ii) the exhausting of statutory remedy prior to invoking the writ jurisdiction is a self-imposed restraint by the High Court. However, the said restraint is not absolute and is subject to the following:

(a) where the writ petition has been filed for the enforcement of any fundamental rights;

(b) violation of principles of natural justice;

(c) where the order or proceedings are wholly without jurisdiction, or ultra vires of an Act is challenged.

(iii) as the impugned order passed by the NCLT, entertaining an application for recalling/revival of the proceedings without there being an express provision under the IBC and allowing the petition with the delay of 6 months in filing the application for recalling of the order dated 11.01.2024 is without jurisdiction and nullity in the eye of law and therefore, the petitioner need not have to exhaust the remedy of appeal under Section 61 of IBC and the petitioner could as

well approach this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

9. Apart from the contention regarding maintainability of the writ petition, so also, the maintainability of the application filed by the respondent before the NCLT for revival of the proceedings, learned senior counsel Sri C K Nandakumar appearing for the petitioner and the learned Additional Solicitor General Sri Aravind Kamath appearing for the respondent have made submission on the merits of the matter also.

10. In addition, several submissions have been made as regards the approval of OTS in the year 2023, part payment made by the petitioner and the default committed, so also, the OTS offer made in the month of February 2026 and the correspondence between the petitioner and the respondent from February 2026 till September 2026.

11. The necessity of consideration of the rival submissions of the petitioner and the respondent as regards the legality or otherwise of the order passed by the NCLT, so also, the arguments regarding consideration of the fresh OTS proposal of the petitioner would have to be considered only if

this Court were to hold that the writ petition filed by the petitioner challenging the impugned order is maintainable.

12. In that view of the matter, this Court proposes to consider the preliminary objection raised by the respondent as regards the maintainability of the writ petition in view of the existence of an alternative remedy of appeal before the NCLAT under Section 61 of the IBC.

13. In light of the serious objections raised by the respondent with regard to the maintainability of the writ petition, the first point that requires to be considered in the present writ petition is as to whether the writ petition is maintainable notwithstanding the availability of alternate remedy under Section 61 of the IBC.

14. As noticed supra, the order passed by NCLT recalling its earlier order dated 11.01.2024 and restoring the CP (IB) No.37/BB/2022 is an appealable order before the NCLAT. Learned senior counsel for the petitioner submits that since the order passed by the NCLT restoring the petition filed by the respondent is without jurisdiction, therefore, petitioner need not have to avail the alternate remedy of appeal before the NCLAT and is entitle to invoke the writ jurisdiction of this

Court. In support of the said contention, learned senior counsel has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Embassy Property Developments Private Limited Vs State of Karnataka and Others***[1]. It is the contention that non-exercise of the power under Article 226 of the Constitution of India even in the case of availability of alternate remedy is a self-imposed restraint by the High Courts. It is his contention that if it is demonstrated that the order passed by the statutory or quasi-judicial authority is with lack of jurisdiction and in case of wrongful exercise of the available jurisdiction the High Court is well within its power under Article 226 of the Constitution of India to adjudicate upon the validity of the orders notwithstanding the availability of the alternate remedy.

15. In light of the aforesaid submission, it is necessary to notice the facts of the case of ***Embassy Property Developments Private Limited*** *(supra).* In the said case, the question involved was whether the High Court was justified in entertaining the Writ Petition under Article 226 of the Constitution of India against an order passed by the NCLT

[1] (2020) 13 SCC 308

under the provisions of IBC, despite availability of a statutory alternative remedy of appeal to the NCLAT. The said question has been answered in paragraph 46 of the said judgment holding that the NCLT whose order was questioned before the High Court invoking the jurisdiction under 226 of the Constitution of India did not had jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplementary Lease Deed for the extension of the mining lease. Since the NCLT chose to exercise the jurisdiction not vested in it, the Hon'ble Apex Court has held that the High Court was justified in entertaining the writ petition filed by the State of Karnataka, challenging the order passed by the NCLT, directing it to execute the Supplementary Lease Deed. The observation of the Hon'ble Apex Court is that the prayer which has been granted by the NCLT could have been sought only before the High Court, invoking the writ jurisdiction under Article 226 of the Constitution of India and not before the NCLT. It is under the said circumstances, the Hon'ble Apex Court has held that the writ petition filed by the State of Karnataka before the High Court of Karnataka was maintainable. The facts and circumstances obtaining in the present case and the judgment relied upon by the petitioner

are altogether different and therefore, the said judgment is not helpful to the petitioner.

16. Learned senior counsel for the petitioner has further relied upon the judgment of the Hon'ble Apex Court in the case of ***Budhia Swain and Others Vs Gopinath Deb and Others***[2] and contended that the power to recall an order could be exercised only under the following circumstances viz,

(i) an order obtained by fraud;

(ii) when the Court is misled by a party; and

(iii) when the Court itself commits a mistake which prejudices a party.

17. It is also his submission that a Tribunal or a Court may recall an order made earlier under the following circumstances:

(i) the proceedings culminating into an order suffer from inherent lack of jurisdiction and such lack of jurisdiction is present;

(ii) there exists fraud or collusion in obtaining the judgment;

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[2] (1999) 4 SCC 396

(iii) there has been a mistake of the Court prejudicing a party; and

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and his estate was not represented.

18. Though the circumstances as stated in the judgment relied upon by the petitioner do not specifically exist in the present case, however, the circumstances which is cited above i.e. ***there has been a mistake of the Court prejudicing a party*** could be applied to the present case. Inasmuch as, the NCLT while passing the order dated 11.01.2024 disposing of the petition filed by the respondent permitting it to put forth its claim before the IRP appointed in CP(IB) No.117/BB/2023 in accordance with the provisions of the IBC, 2016 and the Regulations made there under did not anticipate that the insolvency proceedings initiated by the Canara Bank would get terminated on account of the OTS between the petitioner and the Canara Bank. Therefore, it is in the said circumstances, neither the respondent sought liberty to revive the petition nor the Court has granted such liberty. Therefore, this Court cannot come to a definite conclusion that the NCLT had no inherent jurisdiction or lack of jurisdiction to

entertain the application filed by the respondent for recalling and restoration of the petition filed by it, so as to accept the contention of the petitioner that the writ petition is maintainable since the NCLT did not had jurisdiction to entertain the application for recalling.

19. It is not in dispute that the IBC is a self-contained Code. The remedy of appeal against an order passed by the NCLT is specifically provided in the code itself. If the jurisdiction under Article 226 of the Constitution of India is exercised in the case of present nature, it would amount to breaching the normal stream of judicial proceedings. The facts and circumstances involved in the present case do not suggest that an extraordinary circumstances exist for entertaining the writ petition dehors the remedy of appeal. Whether the NCLT had jurisdiction to entertain the application for recalling or whether the application filed by the respondent for seeking recalling and restoration of the petition filed by it was beyond the period of limitation could also be a ground in a statutorily provided appeal before the NCLAT. The said aspects need not be gone into in a writ petition filed under Article 226 of the Constitution of India. If the writ petition of the present nature is entertained providing of alternative remedy of appeal under the

statute would become otiose. Therefore, this Court is of the opinion that the present writ petition cannot be entertained and adjudicated on merits and the matter requires to be considered only by the NCLAT in a properly constituted appeal under Section 61 of the IBC, since the jurisdiction of appellate Tribunal and the scope of the appellate remedy is wide.

20. It is relevant to take note of the judgments of the Hon'ble Supreme Court in the case of ***M/s Godrej Sara Lee Ltd., Vs The Excise and Taxation Officer-Cum-Assessing Authority & Others***[3] and ***WhirlPool Corporation Vs Registrar of Trade Marks, Mumbai and Others***[4]***,*** wherein, the Hon'ble Apex Court has laid down under what circumstances, the writ court would be justified in entertaining the writ petition despite existence of alternative remedy, which are as follows:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

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[3] (2025) 11 SCC 808
[4] *(1998) 8 SCC 1*

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

This Court is of the opinion that none of the aforesaid circumstances exist in the present case.

21. Much of the arguments have been advanced insofar as the request made by the petitioner for settlement under OTS and the same is pending consideration. The said issue is outside the scope of the present writ petition. However, by order dated 05.10.2026, taking note of the submission of learned senior counsel for the petitioner, the respondent was called upon to respond as to the consideration of request for OTS. In response to the same, learned senior counsel appearing for the respondent had submitted that the petitioner had been called upon to furnish several documents and information for consideration of the request for OTS, if only, the required documents and information are furnished, the respondent would be in a position to take a decision in the matter in accordance with the existing policy. Therefore, it is for the petitioner to make good the requirement for consideration of its request for OTS. No direction could be issued by this Court in

that regard. If the petitioner complies with the conditions of OTS policy, there is no reason to believe that the respondent would not consider the request for OTS, notwithstanding the proceeding before the NCLT/NCLAT.

22. In the result, the following:

ORDER

(i) The writ petition is ***dismissed***.

(ii) The petitioner is at liberty to approach the NCLAT by filing a statutory appeal under Section 61 of IBC, if so advised.

(iii) Since the petitioner is before this Court from 16.11.2024 till this day by prosecuting this writ petition, it is open for the petitioner to seek exclusion of the time spent before this Court by filing an appropriate application under Section 14 of the Limitation Act.

(iv) If such an application is filed, there is no reason to believe that the NCLAT would not consider the same, taking note of the pendency of this petition before this court since 2024.

(v) In view of the fact that that interim order passed by this Court is in operation since 19.11.2024, the same is extended

for another period of 3 weeks from today to enable the petitioner to approach the NCLAT and seek interim protection in accordance with law.

(vi) All the contentions of both the parties are kept open.

(vii) Any observation made in this order is only for the purpose of disposal of this writ petition. In the event of petitioner filing an appeal before the NCLAT, the same shall be considered without being influenced by the observations made in this order.

Sd/-
(T.P.VIVEKANANDA)
JUDGE

BGN