2025:DHC:8460

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 22.09.2025*
Judgment pronounced on: 23.09.2025

\+ **<u>CM(M) 1867/2025 & CM APPL. 60039/2025</u>**

PARSVNATH DEVELOPERS LIMITED .....Petitioner

Through: Mr. Tanmay Mehta, Mr. Manoranjan Sharma, Mr. Arpit Dwivedi and Ms. Sakshi Kapoor, Advocates

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Rajiv Nayar, Senior Advocate with Mrs. Meghna Mishra, Mr. Karan Luthra, Mr. Siddharth Joshi, Ms. Ujjwala Gupta and Mr. Shubham Madan, Advocates

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. Petitioner, being the Corporate Debtor has assailed order dated 20.08.2025 of the learned National Company Law Tribunal, New Delhi Bench, (NCLT) whereby application filed by the Financial Creditor (*respondent no.2 herein*) under Section 7 of the Insolvency and Bankruptcy Code ("the Code") for revival of the Company Petition was allowed. On service of advance notice, learned Senior Counsel for the Financial Creditor appeared to oppose the petition. At request of both sides, in the interest of

expeditious disposal of the proceedings pending before the NCLT, I heard final arguments on the same day.

2. At the outset, learned counsel for petitioner admitted that the order impugned in the present proceedings is assailable by way of an appeal before the National Company Law Appellate Tribunal under Section 61 of the Code. However, learned counsel for petitioner further submitted that the petitioner has invoked jurisdiction of this court under Article 227 of the Constitution of India on the ground that the impugned order of revival of the Company Petition was passed in violation of principles of natural justice to the extent that the petitioner was not granted an opportunity to file formal reply to the application under Section 7 of the Code. Learned counsel for petitioner contended that the impugned order is not sustainable because had the petitioner been given opportunity to file formal reply to the application under Section 7 of the Code, the same would have established that there was complete and concluded settlement of the dispute. In support of his case, learned counsel for petitioner placed reliance on the judgments in the cases titled: ***Ghanshyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Limited,*** (2021) 9 SCC 657 and ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.,*** (2020) 13 SCC 308. Learned counsel for petitioner concluded his arguments submitting that the impugned order be set aside granting opportunity to the petitioner to file a formal reply to the application under Section 7 of the Code as "heavens would not fall" if a fair opportunity to file formal reply is granted to the petitioner.

3. On the other hand, learned Senior Counsel for respondent no.2 strongly supported the impugned order, submitting that there was no violation of any principles of natural justice insofar as the present petitioner was heard at length by the NCLT before passing the impugned order. Learned Senior Counsel also submitted that it is the petitioner who was not diligent and opted not to file reply to the application under Section 7 of the Code despite opportunity. Having not filed a reply to the application despite opportunity, now the petitioner cannot claim violation of principles of natural justice. Further, learned Senior Counsel for respondent no.2 also contended that the issue as to whether the settlement was not conclusively arrived at can be considered by NCLT even at this stage after revival of the Company Petition, so no prejudice would be caused to the petitioner. Learned Senior Counsel also submitted that the petitioner had filed a petition under Section 9 of the Arbitration and Conciliation Act before this court with one of the prayers being stay of the proceedings in the revival application and that stay having not been granted, the present petition has been filed after the revival was allowed. In support of his arguments, learned Senior Counsel for respondent no.2 placed reliance on the judgment in the case of ***Mohammed Enterprises (Tanzania) Ltd vs Farooq Ali Khan & Ors.,*** 2025 SCC OnLine SC 23.

4. The legal position as claimed by learned counsel for petitioner, placing reliance on the above cited judicial precedents, is not in dispute. In the light of availability of alternate efficacious remedy, refusal of the High Court to exercise jurisdiction under Article 227 of the Constitution of India

is a rule of self-restraint and not an absolute prohibition. Despite availability of alternate remedy, the High Court can certainly invoke the supervisory jurisdiction under Article 227 of the Constitution of India in cases where enforcement of any of the fundamental rights is sought; or the order impugned is wholly without jurisdiction; or principles of natural justice were violated leading to the impugned order.

5. In the case of ***Mohammed Enterprises*** (supra), the Supreme Court held that the Insolvency and Bankruptcy Code is a complete Code in itself, having sufficient checks and balances, remedial avenues and appeals; that adherence to protocols and procedure maintains legal discipline and preserves the balance between the need of the order and the quest for justice; and that the supervisory and judicial review powers vested in the High Court represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious application.

6. In the present case, the core issue is as to whether the impugned order was passed by the NCLT was in abrogation of *jus naturale*, going by the claim of the petitioner that it was deprived of opportunity to file formal reply to the application under Section 7 of the Code. It is nobody's case that the impugned order was passed without affording a hearing to the present petitioner. The impugned order is a detailed order taking note of the entire developments of the proceedings.

7. Admittedly, in terms with order dated 25.07.2025 of NCLT, notice of the revival proceedings application returnable on 20.08.2025 was duly served on the present petitioner, directing that reply, if any, may be filed by the present petitioner within one week of date of receipt of the notice, which would follow rejoinder, if any, before the next date. Copy of order dated 25.07.2025 is Annexure P18 to the present petition.

8. Also admittedly, despite service of the said notice of NCLT on 01.08.2025, neither reply to the application under Section 7 of the Code nor even any application seeking enlargement of time to file reply to the application was filed by the present petitioner till 20.08.2025.

9. As reflected from the impugned order, the stand taken by the present petitioner before the NCLT was that an application for revival could be preferred only if there was any default in payment of the amount of debt as per the schedule and the present respondent no.2 had failed to place on record the schedule so the same be allowed to be filed by way of affidavit. But the case set up before the NCLT by the present respondent no.2 was that the restructuring proposal submitted by the present petitioner was not commercially viable, so vide email dated 16.07.2025 the same was rejected by the present respondent no.2. Nothing prevented the petitioner from filing the said affidavit with or without reply till 20.08.2025.

10. Coming to the "heavens would not fall" argument of learned counsel for petitioner, it is high time, the adjudicators shift paradigm, discarding the

"heavens would not fall" approach. Deferment, unless unavoidable of each day matters. The admitted position being that the notice of the application under Section 7 of the Code was duly served on the present petitioner on 01.08.2025 and the impugned order after detailed arguments was passed on 20.08.2025, one also has to analyse the history of and the time already spent in the litigation. Where the court comes to a conclusion that the defaulting party is deliberately protracting the proceedings in one or the other manner with the intention to frustrate the other party into abandoning the *lis*, "heavens would certainly fall". The learned NCLT in the impugned order has narrated in detail the entire record of the dispute, reflecting that somehow the proceedings were being protracted.

11. With regard to the aforesaid, it would be apposite to extract the relevant portion of the impugned order:

> *"10. As can be seen from the factual development as noted hereinabove, it is quite long that the decision on admission of CP(IB)-468(PB)2024 is delayed and derailed on account of the settlement between the parties, and the application was disposed of on the plea of settlement twice. It is not for this Tribunal to facilitate the settlement between the parties, and only when the parties on their own enter into the settlement, this Tribunal can the exercise its power under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to allow the withdrawal of the proceedings. Once the Financial Creditor has brought on record in black and white that there is no settlement and the debt restructuring proposal was not accepted by the Financial Creditor, we do not find any justification to not to revive the CP(IB)-468(PB)2024.*
>
> *11. Mr. Abhishek Anand, Ld. Counsel for the Corporate Debtors espoused and emphasized that this Tribunal should at least give an opportunity to the Corporate Debtor to file a reply to the application and explain to this Tribunal that the repayment schedule has not been*

flouted. Once the Financial Creditor has taken a stand that it has not accepted the settlement offer given by the respondent in the proceedings initiated under Section 7 of the IBC, 2016, this Tribunal cannot overstretch its discretionary power to facilitate or muster settlement between the parties. The settlement is clearly a subject between the parties, and this Tribunal can simply take note of it. In the totality of the facts and circumstances, we allow the application i.e. IA- 3612/ND/2025 and restore the CP(IB)-468(PB)2024 to its original position."

12. I also find substance in the submission of learned Senior Counsel for respondent no.2 that having failed to get stay on the revival proceedings as prayed in prayer clause (d) of the petition under Section 9 of Arbitration and Conciliation Act, the petitioner instead of challenging the presently impugned order by way of appeal has brought the present petition only as a matter of speculation and forum hunting aimed at protracting the proceedings pending before the NCLT.

13. Not even a whiff of reason has been advanced by learned counsel for the petitioner for not having preferred an appeal against the impugned order. Of course, as discussed above, it is only a matter of self-restraint for the High Court where despite availability of appellate remedy, a litigant seeks to invoke supervisory jurisdiction of the High Court. But the petitioners should at least spell out a reason for not having availed appellate remedy, which has wider scope, as compared to the supervisory jurisdiction. The absence of such reasoning gives credence to the stand taken by the Corporate Creditor that the petitioner is trying to protract proceedings by leaving scope of further delay in the matter by approaching NCLAT, if this petition is rejected.

14. In my considered view, this is certainly not a case for this court to invoke supervisory jurisdiction under Article 227 of the Constitution of India in order to interfere in the corporate insolvency resolution proceedings under the Code.

15. The impugned order is upheld and the present petition as well as accompanying application is dismissed.

GIRISH KATHPALIA

Digitally signed by GIRISH KATHPALIA
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GIRISH KATHPALIA
(JUDGE)

SEPTEMBER 23, 2025/*ry/as*