REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 9170 of 2019
(@ Special Leave Petition (C) No. 22596 of 2019)

M/s Embassy Property Developments Pvt. Ltd. ...Appellant(s)

Versus

State of Karnataka & Ors. ...Respondent(s)

WITH

Civil Appeal No. 9171 of 2019
(@ Special Leave Petition (C) No. 22684 of 2019)

and

Civil Appeal No. 9172 of 2019
(@ Special Leave Petition (C) No. 22724 of 2019)

J U D G M E N T

V. Ramasubramanian, J.

1. Leave Granted.

2. Two seminal questions of importance namely:-

i) Whether the High Court ought to interfere, under Article 226/227 of the Constitution, with an Order

passed by the National Company Law Tribunal in a proceeding under the Insolvency and Bankruptcy Code, 2016, ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal and if so, under what circumstances; and

ii) Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the Insolvency and Bankruptcy Code, 2016,

arise for our consideration in these appeals.

Brief background facts

3. There are three appeals on hand, one filed by the Resolution Applicant, the second filed by the Corporate Debtor through the Resolution Professional and the third filed by the Committee of Creditors, all of which challenge an Interim Order passed by the Division Bench of High Court of Karnataka in a writ petition, staying the operation of a direction contained in the order of the NCLT, on a Miscellaneous Application filed by the Resolution Professional.

4. The background facts leading to the filing of the above appeals, in brief, are as follows:

i) A company by name M/s. Udhyaman Investments Pvt. Ltd. which is the twelfth Respondent in the first of these three appeals, claiming to be a Financial Creditor, moved an application before the NCLT Chennai, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the *IBC, 2016*), against M/s. Tiffins Barytes Asbestos & Paints Ltd., the Corporate Debtor (which is the fourth Respondent in the first of these three appeals and which is also the appellant in the next appeal).

ii) By an Order dated 12.03.2018, NCLT Chennai admitted the application, ordered the commencement of the Corporate Insolvency Resolution Process and appointed an Interim Resolution Professional. Consequently, a Moratorium was also declared in terms of Section 14 of the IBC, 2016.

iii) At that time, the Corporate Debtor held a mining lease granted by the Government of Karnataka, which was to expire by 25.05.2018. Though a notice for premature termination of the lease had already been issued on 09.08.2017, on the allegation of violation of statutory rules and the terms and conditions of the lease deed, no order of termination had been passed till the date of initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as CIRP).

iv) Therefore, the Interim Resolution Professional appointed by NCLT addressed a letter dated 14.03.2018 to the Chairman of the Monitoring Committee as well as the Director of Mines & Geology informing them of the commencement of CIRP. He also wrote a letter dated 21.04.2018 to the Director of Mines & Geology, seeking the benefit of deemed extension of the lease beyond 25.05.2018 upto 31.3.2020 in terms of Section 8-A (6) of the Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act, 1957).

v) Finding that there was no response, the Interim Resolution Professional filed a writ petition in WP No. 23075 of 2018 on the file of the High Court of Karnataka, seeking a declaration that the mining lease should be deemed to be valid upto 31.03.2020 in terms of Section 8A(6) of the MMDR Act, 1957.

vi) During the pendency of the writ petition, the Government of Karnataka passed an Order dated 26.09.2018, rejecting the proposal for deemed extension, on the ground that the Corporate Debtor had contravened not only the terms and conditions of the Lease Deed but also the provisions of Rule 37 of the Mineral Concession Rules, 1960 and Rule 24 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Rules, 2016.

vii) In view of the Order of rejection passed by the Government of Karnataka, the Corporate Debtor, represented by the Interim Resolution Professional, withdrew the Writ Petition No.23075 of 2018, on 28.09.2018, with liberty to file a fresh writ petition.

viii) However, instead of filing a fresh writ petition (in accordance with the liberty sought), the Resolution Professional moved a Miscellaneous Application No.632 of 2018, before the NCLT, Chennai praying for setting aside the Order of the Government of Karnataka, and seeking a declaration that the lease should be deemed to be valid upto 31.03.2020 and also a consequential direction to the Government of Karnataka to execute Supplement Lease Deeds for the period upto 31.03.2020.

ix) By an Order dated 11.12.2018, NCLT, Chennai allowed the Miscellaneous Application setting aside the Order of the Government of Karnataka on the ground that the same was in violation of the moratorium declared on 12.03.2018 in terms of Section 14(1) of IBC, 2016. Consequently the Tribunal directed the Government of Karnataka to execute Supplement Lease Deeds in favour of the Corporate Debtor for the period upto 31.03.2020.

x) Aggrieved by the order of the NCLT, Chennai, the Government of Karnataka moved a writ petition in WP No.5002 of 2019, before the High Court of Karnataka. When the writ petition came up for hearing, it was conceded by the Resolution Professional before the High Court of Karnataka that the order of the NCLT could be set aside and the matter relegated to the Tribunal, for a decision on merits, after giving an opportunity to the State to respond to the reliefs sought in the Miscellaneous Application. It is relevant to note here that the Order of the NCLT dated 11.12.2018, was passed ex-parte, on the ground that the State did not choose to appear despite service of notice.

xi) Therefore, by an Order dated 22.03.2019, the High Court of Karnataka set aside the Order of the NCLT and remanded the matter back to NCLT for a fresh consideration of the Miscellaneous Application No.632 of 2018.

xii) Thereafter, the State of Karnataka filed a Statement of Objections before the NCLT, primarily raising two objections, one relating to the jurisdiction of the NCLT to adjudicate upon disputes arising out of the grant of mining leases under the MMDR Act, 1957, between the State-Lessor and the Lessee and another relating to the fraudulent and collusive manner in which the entire resolution process was initiated by the related parties of the Corporate Debtor themselves, solely with a view to corner the benefits of the mining lease.

xiii) Overruling the objections of the State, the NCLT Chennai passed an Order dated 03.05.2019 allowing the Miscellaneous Application, setting aside the order of rejection and directing the Government of Karnataka to execute Supplemental Lease Deeds.

xiv) Challenging the Order of the NCLT, Chennai, the Government of Karnataka moved a writ petition in WP No.41029 of 2019 before the High Court of Karnataka. When the writ petition came up for orders as to admission, the Corporate Debtor represented by the Resolution Professional appeared through counsel and took notice and sought time to get instructions. Therefore, the High Court, by an Order dated 12.09.2019 adjourned the matter to 23.09.2019 and granted a stay of operation of the direction contained in the impugned Order of the Tribunal. Interim Stay was necessitated in view of a Contempt Application moved by the Resolution Professional before the NCLT against the Government of Karnataka for their failure to execute Supplement Lease deeds.

xv) It is against the said ad Interim Order granted by the High Court that the Resolution Applicant, the Resolution Professional and the Committee of Creditors have come up with the present appeals.

Rival Contentions

5. Sh. K. V. Viswanathan, learned Senior Counsel appearing on behalf of the Resolution Applicant assailed the impugned Order on the ground that when an efficacious alternative remedy is available under Section 61 of IBC, 2016, the High Court of Karnataka ought not to have entertained a writ petition and that too against an Order passed by the Chennai Bench of NCLT. He drew our attention to a series of judgments, wherein it was held that when a statutory forum is created for the redressal of grievances, a writ petition should not be entertained. Since the essence of IBC, 2016 is the revival of a Corporate Debtor and the resolution of its problems to enable it to survive as a going concern, through the maximization of the value of its assets, the learned Senior Counsel contended that the Interim Resolution Professional/Resolution Professional had a right to move the NCLT for appropriate reliefs for the preservation of the properties of the Corporate Debtor and therefore the only way the steps taken by the Resolution Professional could be set at

naught, is to take recourse to the provisions of the IBC alone. Relying upon the observations made by this Court in a couple of decisions that IBC, 2016 is a unified umbrella of code, the learned Senior Counsel contended that the remedies provided thereunder are all pervasive and exclusive.

6. Sh. Mukul Rohatgi, learned Senior Counsel appearing for the Resolution Applicant supplemented the aforesaid arguments and contended that though he would not go to the extent of saying that the jurisdiction of the High Court stood completely ousted, the High Court was obliged to switch over to the hands off mode, in matters of this nature. The learned Senior Counsel also contended that the NCLT has already approved the Resolution Plan, by an order dated 12.06.2019 and that therefore the High Court cannot do anything that will tinker with or destroy the very Resolution Plan approved by the NCLT.

7. Sh. Kapil Sibal, the learned Senior Counsel appearing for the Resolution Professional contended that the whole object of IBC, 2016 will get defeated, if the Orders of NCLT are declared

amenable to review by the High Court under Article 226/227. He also contended that the provisions of IBC, 2016 are given overriding effect under Section 238, over all other statutes. It is his further contention that after taking a stand in their first writ petition in WP No.5002 of 2019 that the dispute relating to the refusal to grant deemed extension of the mining lease falls squarely within the jurisdiction of the Mining Tribunal and after raising a plea that the rejection of the benefit of deemed extension, ought to have been challenged by way of a revision before the Central Government under Section 30 of the MMDR Act, 1957 the State of Karnataka agreed to go back to the NCLT for raising all contentions. Therefore, according to the learned counsel, it was not open to the Government to question the jurisdiction of the NCLT in the next round of litigation. Since the expression "Property" as defined in Section 3 (27) of IBC, 2016 includes every description of interest including present or future or vested or contingent interest arising out of or incidental to property, and also since the right to deemed extension of lease would come within the

purview of the expression “Property”, it was contended by the learned Senior Counsel that the Resolution Professional has a duty to preserve the property. The only ground on which the Government of Karnataka opposed the Miscellaneous Application of the Resolution Professional, according to the learned Senior Counsel, was fraud and collusion on the part of the Corporate Debtor and the creditor who initiated the CIRP. Therefore, it is contended by him that in view of the sweep of the jurisdiction conferred upon NCLT under Section 60 (5) (c) of the IBC, 2016, the Tribunal was entitled to investigate even into allegations of fraud. Once it is conceded that NCLT will have jurisdiction even to enquire into allegations of fraud, then the question of invoking the jurisdiction of the High Court under Article 226 as against an order passed by NCLT, according to the learned counsel, does not arise. Any recognition by this court, of the jurisdiction of the High Court under Article 226 to interfere with the Orders of the NCLT under IBC, 2016, according to the learned Senior Counsel, would completely derail the resolution process which is bound

to happen within a time frame. Therefore, he appealed that the Order of the High Court should be set aside on the ground of lack of jurisdiction.

8. Sh. Arvind P. Datar and Sh. E. Om Prakash, learned Senior Counsel appearing for the Committee of Creditors submitted that IBC, 2016 being a complete code in itself does not provide any room for challenging the Orders of NCLT, otherwise than in a manner prescribed by the code itself. What was sought by the Resolution Professional, according to the learned Senior Counsel, was a mere recognition of the statutory right of deemed extension of lease conferred by Section 8A of the MMDR Act, 1957 and that therefore NCLT cannot be taken to have exercised a jurisdiction not vested in it in law, so as to enable the High Court to invoke the jurisdiction under Article 226.

9. In response, Sh. K.K. Venugopal, learned Attorney General submitted that if a case falls under the category of inherent lack of jurisdiction on the part of a Tribunal, the exercise of jurisdiction by the Tribunal would certainly be

amenable to the jurisdiction of the High Court under Article 226. Since the contours of jurisdiction of NCLT are defined in Clauses (a), (b) and (c) of Sub-section (5) of Section 60 and also since the powers of the NCLT are defined in Sub-section (4) of Section 60, to be akin to those of the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act of 1993 (hereinafter referred to as *DRT Act, 1993*), it was contended by the learned Attorney General that the jurisdiction of the NCLT is confined only to contractual matters inter-parties. An order passed by a statutory/quasi-judicial authority under certain special enactments such as the MMDR Act, 1957 falls in the realm of public law and hence it was contended by the learned Attorney General that the NCLT would have no power of judicial review of such orders. The learned Attorney General also drew our attention to the minutes of the 10th meeting of the Committee of Creditors held on 27.02.2019, in which a Company other than the present Resolution Applicant was recorded to have made a better offer. But the present Resolution Applicant was

able to have his plan approved, despite the offer being lesser, only because they were willing to take the risk of the mining lease not being renewed. Therefore, it was his contention that a person who was willing to take a chance, cannot now take shelter under the approval of the Resolution Plan. On the contention that the Government of Karnataka had an efficacious alternative remedy before the NCLAT, the learned Attorney General submitted, on the basis of the decision in ***Barnard and Others vs. National Dock Labour Board and Others***[1] that when an inferior Tribunal passes an Order which is a nullity, the superior Court need not drive the party to the appellate forum stipulated by the Act. The learned Attorney General also relied upon the decision of this Court in ***The State of Uttar Pradesh vs. Mohammad Nooh.***[2]

Question No. 1

10. In the backdrop of the facts narrated and in the light of the rival contentions extracted above, the first question that arises for consideration is as to whether the High Court ought

1 *(1953) 2 WLR 995*
2 *(1958) SCR 595*

to interfere, under Article 226/227 of the Constitution, with an order passed by NCLT in a proceeding under the IBC, 2016, despite the availability of a statutory alternative remedy of appeal to NCLAT.

11. It is beyond any pale of doubt that IBC, 2016 is a complete Code in itself. As observed by this Court in ***M/s Innoventive Industries Limited vs. ICICI Bank,***[3] it is an exhaustive code on the subject matter of insolvency in relation to corporate entities and others. It is also true that 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 and *(iii)* this court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. In so far as insolvency resolution of corporate debtors and personal

3 *AIR 2017 SC 4084*

guarantors are concerned, any order passed by the NCLT is appealable to NCLAT under Section 61 of the IBC, 2016 and the orders of the NCLAT are amenable to the appellate jurisdiction of this court under Section 62. It is in this context that the action of the State of Karnataka in by-passing the remedy of appeal to NCLAT and the act of the High Court in entertaining the writ petition against the order of the NCLT are being questioned.

12. For finding an answer to the question on hand, the scope of the jurisdiction and the nature of the powers exercised by – (i) the High Court under Article 226 of the Constitution and (ii) the NCLT and NCLAT under the provisions of IBC, 2016 are to be seen.

Jurisdiction and the powers of the High Court under Article 226

13. What is recognized by Article 226 (1) is the power of every High Court to issue (i) directions, (ii) orders or (iii) writs. They can be issued to (i) any person or (ii) authority including the Government. They may be issued (i) for the enforcement of any

of the rights conferred by Part III and (ii) for any other purpose. But the exercise of the power recognized by Clause (1) of Article 226, is restricted by the territorial jurisdiction of the High Court, determined either by its geographical location or by the place where the cause of action, in whole or in part, arose. While the nature of the power exercised by the High Court is delineated in Clause (1) of Article 226, the jurisdiction of the High Court for the exercise of such power, is spelt out in both Clauses (1) and (2) of Article 226.

14. Traditionally, the jurisdiction under Article 226 was considered as limited to ensuring that the judicial or quasi-judicial tribunals or administrative bodies do not exercise their powers in excess of their statutory limits. But in view of the use of the expression *"any person"* in Article 226 (1), courts recognized that the jurisdiction of the High Court extended even over private individuals, provided the nature of the duties performed by such private individuals, are public in nature. Therefore, the remedies provided under Article 226 are public law remedies, which stand in contrast to the remedies

available in private law. As observed by this Court in ***Nilabati Behera @ Babita Behera vs. State of Orissa,***[4] public law proceedings serve a different purpose than private law proceedings.

15. One of the well recognized exceptions to the self-imposed restraint of the High Courts, in cases where a statutory alternative remedy of appeal is available, is the lack of jurisdiction on the part of the statutory/quasi-judicial authority, against whose order a judicial review is sought. Traditionally, English courts maintained a distinction between cases where a statutory/quasi-judicial authority exercised a jurisdiction not vested in it in law and cases where there was a wrongful exercise of the available jurisdiction. An "error of jurisdiction" was always distinguished from "in excess of jurisdiction", until the advent of the decision rendered by the House of Lords, by a majority of 3:2 in ***Anisminic Ltd. vs. Foreign Compensation Commission.***[5] After acknowledging that a confusion had been created by the observations made in

4 *(1993) 2 SCC 746*
5 *(1969) 2 WLR 163*

Reg. vs. Governor of Brixton Prison, Ex parte Armah[6] to the effect that ***if a Tribunal has jurisdiction to go right, it has jurisdiction to go wrong,*** it was held in ***Anisminic*** that the real question was not whether an authority made a wrong decision but whether they enquired into and decided a matter which they had no right to consider.

16. ***Anisminic***, hailed as a break-through and a legal landmark (see In **Re Racal Communications Ltd**[7]) abolished the old distinction between errors of law that went to jurisdiction and errors of law that did not. ***Anisminic*** was hailed in ***O'Reilly vs. Mackman***[8] to have liberated English public law from the fetters that the courts had theretofore imposed upon themselves so far as determinations of inferior courts and statutory tribunals were concerned, by drawing esoteric distinctions between errors of law committed by such tribunals that went to their jurisdiction, and errors of law committed by them within their jurisdiction.

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6 *(1968) AC 192*
7 *(1981) AC 374*
8 *(1983) 2 AC 237*

17. But ***In Re Racal*** made a distinction between courts of law on the one hand and administrative tribunal/ administrative authority on the other and held that in so far as (inferior) courts of law are concerned, the subtle distinction between errors of law that went to jurisdiction and errors of law that did not, would still survive, if the decisions of such courts are declared by the Statute to be final and conclusive. Thus one distinction was gone with ***Anisminic***, but another was born with ***Re Racal***. This could be seen from the after effects of ***Anisminic***.[9]

18. Interestingly just four days before the House of Lords delivered the judgment in ***Anisminic*** (on 17.12.1968), an identical view was taken by a three member bench of this court (delivered on 13.12.1968) in ***Official Trustee, West***

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9 ***Anisminic had its own quota of problems. Prof. Wade, as pointed out in R. v. Lord President of the Privy Council Ex p. Page, [1993] A.C. 682, seems to have opined that the true effect of Anisminic was still in doubt. People like Sir John Laws, quoted by Prof. Paul Craig, and which was extracted in the decision in Regina (Privacy International) v. Investigatory Powers Tribunal, [2019] UKSC 22, seems to have opined that once the distinction between jurisdictional and non-jurisdictional errors was discarded, there was no longer any need for the ultra vires principle and that ultra vires is, in truth, a fig-leaf which has enabled the courts to intervene in decisions without an assertion of judicial power which too nakedly confronts the established authority of the Executive or other public bodies. According to Sir John Laws, Anisminic has produced the historical irony that with all its emphasis on nullity, it nevertheless erected the legal milestone which pointed towards a public law jurisprudence in which the concept of voidness and the ultra vires doctrine have become redundant. In Regina (Privacy International) the U.K Supreme court also quoted the editors of De Smith's Judicial Review to the effect: "The distinction between jurisdictional and non-jurisdictional error is ultimately based upon foundations of sand. Much of the superstructure has already crumbled. What remains is likely quickly to fall away as the courts rightly insist that all administrative action should be simply, lawful, whether or not jurisdictionally lawful."***

Bengal & Others vs. Sachindra Nath Chatterjee & Another,[10] approving the view taken by the Full bench of the Calcutta High Court in ***Hirday Nath Roy vs. Ramachandra Barna Sarma***.[11] It was held therein that **"*before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for.*"** This court also pointed out that it is not sufficient that it has some jurisdiction in relation to the subject matter of the suit, but its jurisdiction must include (1) the power to hear and decide the questions at issue and (2) the power to grant the relief asked for. This decision in ***Official Trustee*** was followed in a recent decision in ***Indian Farmers Fertiliser Co-operative Ltd. vs. Bhadra Products***,[12] quite independent of ***Anisminic*** and its followers.

19. Though the decision in ***Official Trustee*** preceded ***Anisminic*** and can proudly be claimed as the Indian

10 *(1969) 3 SCR 92*
11 *ILR LXVIII Calcutta 138*
12 *(2018) 2 SCC 534*

precursor to an English legal landmark, several subsequent decisions of this court considered ***Anisminic*** alone to have provided the breakthrough. In ***Mafatlal Industries & Others vs. Union of India***,[13] Paripoornan, J. provided the list of Indian cases which cited *Anisminic* with approval. They are:

> (1) Union of India vs. Tarachand Gupta & Bros., (1971) 1 SCC 486
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> (2) A. R. Antulay vs. R. S. Nayak & Another, (1988) 2 SCC 602
>
> (3) R. B. Shreeram Durga Prasad & Fatehchand Nursing Das vs. Settlement Commission (IT & WT) & Another, (1989) 1 SCC 628
>
> (4) Associated Engineering Co. vs. Govt. of Andhra Pradesh & Another, (1991) 4 SCC 93 and
>
> (5) Shiv Kumar Chadha vs. Municipal Corporation of Delhi & Others, (1993) 3 SCC 161

20. But in ***M.L. Sethi vs. R.P. Kapur***,[14] K. K. Mathew, J., made certain interesting observations about ***Anisminic***. The learned Judge observed that the effect of the dicta in ***Anisminic*** is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to a vanishing

13 *(1997) 5 SCC 536*
14 *(1972) 2 SCC 427*

point and that it came perilously close to saying that there is jurisdiction if the decision is right in law, but none if it is wrong. ***Anisminic***, according to him virtually left a court or tribunal with no margin of legal error.

21. Again in ***Hari Prasad Mulshanker Trivedi vs. V.B Raju***,[15] K. K. Mathew, J., speaking for the Constitution Bench, pointed out that though the dividing line between lack of jurisdiction or power and the erroneous exercise of it has become thin with ***Anisminic***, the distinction had not been wiped out completely.

22. But it is relevant to note that ***Official Trustee/Anisminic*** and what followed both, were mostly in the context of the power of the superior court to interfere with the decisions of subordinate courts/tribunals or administrative authorities. Most of these decisions were not in the context of the exercise of jurisdiction despite the availability of alternative remedy. That there exists such a distinction between (i) cases where the jurisdiction of a

15 *(1974) 3 SCC 415*

superior court is questioned on the basis of ouster clauses and (ii) cases where the exercise of jurisdiction by a superior court is questioned on the ground of availability of alternative remedy, was recognized even in ***Anisminic***, when Lord Reid referred to the decision in ***Smith vs. East Elloe Rural District Council***[16] as posing some difficulty. As a result, the Court of Appeal held in ***R vs. Secretary of State for the Environment, Ex p. Ostler***[17] that the availability of a statutory right to challenge within a specified time limit, among other points, provided a sufficient basis for distinguishing ***Anisminic***. This was taken note of by the UK Supreme Court in ***Regina (Privacy International).*** Therefore the question whether the error committed by an administrative authority/tribunal or a court of law went to jurisdiction or whether it was within jurisdiction may still be relevant to test whether a statutory alternative remedy should be allowed to be bypassed or not.

16 *(1956) AC 736*
17 *(1977) QB 122*

23. In several cases, both in England and India, the ancient rule stated by Willes, J., in ***Wolverhampton New Waterworks Co. vs. Hawkesford***[18] to the effect that where a liability not existing at Common Law is created by a statute, which also gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed, has been quoted with approval. For instance, ***Union Bank of India vs. Satyawati Tandon***[19] held that the availability of a remedy of appeal under the DRT Act, 1993 and SARFAESI Act, 2002 should deter the High Courts from exercising the jurisdiction under Article 226. Similarly, the availability of remedy of appeal under Section 173 of the Motor Vehicles Act, 1988 as against an award of the Accidents Claims Tribunal was held in ***Sadhana Lodh vs. National Insurance Co.***[20] as sufficient for the High Court to refuse to exercise its supervisory jurisdiction. The same principle was applied in (1) ***Nivedita Sharma vs. Cellular Operators Association of***

18 *[1859] 6 CB (NS) 336*
19 *(2010) 8 SCC 110*
20 *(2003) 3 SCC 524*

India[21] and (2) ***Cicily Kallarackal vs. Vehicle Factory***[22] in relation to the awards passed by the special fora constituted under the Consumer Protection Act, 1986.

24. Therefore in so far as the question of exercise of the power conferred by Article 226, despite the availability of a statutory alternative remedy, is concerned, ***Anisminic*** cannot be relied upon. The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction, should certainly be taken into account by High Courts, when Article 226 is sought to be invoked bypassing a statutory alternative remedy provided by a special statute.

25. On the basis of this principle, let us now see whether the case of the State of Karnataka fell under the category of (1) lack of jurisdiction on the part of the NCLT to issue a direction in relation to a matter covered by MMDR Act, 1957 and the Statutory Rules issued thereunder or (2) mere wrongful exercise of a recognised jurisdiction, say for instance, ***asking***

21 *(2011) 14 SCC 337*
22 *(2012) 8 SCC 524*

a wrong question or applying a wrong test or granting a wrong relief.

26. The MMDR Act, 1957 is a Parliamentary enactment traceable to Entry 54 of the Union List in Seventh Schedule of the Constitution. The object of the Act as it stood originally, was the regulation of mines and development of minerals. After the Amendment Act 38 of 1999, the object of the Act is to provide for the development and regulation of mines and minerals. Section 2 of the Act declares that it is expedient in public interest that the Union should take under its control, the regulation of mines and the development of minerals. Section 4 (1) of the Act prohibits the undertaking of mining operations (and reconnaissance and prospecting operations), in any area, except under and in accordance with the terms and conditions of a mining lease granted under the Act and the Rules made thereunder. After the insertion of Sub-section (1A) in Section 4, by the Amendment Act 38 of 1999, even transportation or storage of any mineral otherwise than in accordance with the provisions of the Act and the Rules made

thereunder is prohibited. The Act also imposes restrictions on the grant of mining leases. Section 8A of the Act, inserted by the Amendment Act 10 of 2015 provides for deemed grant and deemed extension of different kinds. Primarily Section 8A applies only to minerals other than those specified in Parts A and B of the First Schedule. In so far as minor minerals are concerned, the State government is empowered to make rules for regulating the grant of mining leases. It is important to note that Section 19 of the Act declares any mining lease granted, renewed or acquired in contravention of the provisions of the Act or any rule or order made thereunder to be void and of no effect. The Act confers powers of search, entry and inspection upon officers authorised by the Central or State governments. Section 30 of the Act empowers the Central government, either of its own motion or on an application made by the aggrieved party, to revise any order made by a State government in exercise of the powers conferred under the Act with respect to any mineral other than a minor mineral. The procedure for filing a revision is

prescribed in Rule 54 and the method of disposal of such revisions is prescribed in Rule 55 of the Mineral Concession Rules, 1960.

27. Though in ***Thressiamma Jacob vs. Deptt. of Mining & Geology***,[23] this court held that the mineral wealth in the sub-soil would go along with the ownership of the land, the question of entitlement of the government to charge royalty was left open, as it was pending reference to the constitution bench. But in the case on hand, the land which formed the subject matter of mining lease, belongs to the State of Karnataka. The liberties and privileges granted to the Corporate Debtor by the Government of Karnataka under the mining lease, are delineated in Part IV of the mining lease. The mining lease was issued in accordance with the statutory rules namely Mineral Concession Rules, 1960. Therefore the relationship between the Corporate Debtor and the Government of Karnataka under the mining lease is not just contractual but also statutorily governed. As we have indicated elsewhere, the MMDR Act, 1957 is a Parliamentary enactment

23 *(2013) 9 SCC 725*

traceable to Entry 54 in List I of the Seventh Schedule. This Entry 54 speaks about regulation of mines and development of minerals to the extent to which such regulation and development under the control of the Union, is declared by Parliament by law to be expedient in public interest. In fact ***the expression "public interest" is used only in 3 out of 97 Entries in List I, one of which is Entry 54, the other two being Entries 52 and 56***. Interestingly, Entry 23 in List II does not use the expression "public interest", though it also deals with regulation of mines and mineral development, subject to the provisions of List I. It is this element of "public interest" that finds a place in Section 2 of the MMDR Act, 1957, in the form of a declaration. Section 2 of MMDR Act, 1957 reads as follows:

> *"It is hereby declared that it is expedient in the public interest that Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."*

28. Therefore as rightly contended by the learned Attorney General, the decision of the Government of Karnataka to

refuse the benefit of deemed extension of lease, is in the public law domain and hence the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action. The NCLT, being a creature of a special statute to discharge certain specific functions, cannot be elevated to the status of a superior court having the power of judicial review over administrative action. Judicial review, as observed by this court in ***Sub-Committee on Judicial Accountability vs. Union of India***,[24] flows from the concept of a higher law, namely the Constitution. Paragraph 61 of the said decision captures this position as follows:

> *"But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It*

24 *(1991) 4 SCC 699*

is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation."

29. The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.

Jurisdiction and powers of NCLT

30. NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being

in force. Insofar as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the Orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT.

31. In contrast, Sub-sections (4) and (5) of Section 60 of IBC, 2016 give an indication respectively about the powers and jurisdiction of the NCLT. Section 60 in entirety reads as follows:-

> *"**Adjudicating Authority for corporate persons**.-(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*
> *(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in*

this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before the National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III in of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

32. Sub-section (4) of Section 60 of IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of Sub-section (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. The object of Sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single Forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different Fora, leading to conflict of interests, situations or decisions.

33. If the object of Sub-section (2) of Section 60 is to ensure that the insolvency resolutions of the corporate debtor and its guarantors are dealt with together, then the question that arises is as to why there should be a reference to the powers of the DRT in Sub-section (4). The answer to this question is to be found in Section 179 of IBC, 2016. Under Section 179 (1), it is the DRT which is the Adjudicating Authority in relation to insolvency matters of individuals and firms. This is in contrast to Section 60(1) which names the NCLT as the Adjudicating Authority in relation to insolvency resolution and liquidation of corporate persons including corporate debtors and personal guarantors. The expression "personal guarantor" is defined in Section 5(22) to mean an individual who is the surety in a contract of guarantee to a corporate debtor. Therefore the object of Sub-section (2) of Section 60 is to avoid any confusion that may arise on account of Section 179(1) and to ensure that whenever a CIRP is initiated against a corporate debtor, NCLT will be the Adjudicating Authority not only in respect of such corporate debtor but also in respect of the

individual who stood as surety to such corporate debtor, notwithstanding the naming of the DRT under Section 179(1) as the Adjudicating Authority for the insolvency resolution of individuals. This is also why Sub-section (2) of Section 60 uses the phrase "notwithstanding anything to the contrary contained in this Code".

34. Sub-section (2) of Section 179 confers jurisdiction upon DRT to entertain and dispose of (i) any suit or proceeding by or against the individual debtor (ii) any claim made by or against the individual debtor and (iii) any question of priorities or any other question whether of law or facts arising out of or in relation to insolvency and bankruptcy of the individual debtor. Clauses (a), (b) and (c) of Sub-section (2) of Section 179 are identical to Clauses (a), (b) and (c) of Sub-section (5) of Section 60. Therefore the only reason why Sub-section (4) is incorporated in Section 60 is to ensure that NCLT will exercise jurisdiction – (1) not only to entertain and dispose of matters referred to in Clauses (a), (b) and (c) of Sub-section (5) of Section 60 in relation to the corporate debtor, (2) but also to

entertain and dispose of the matters specified in Clauses (a), (b) and (c) of Sub-section (2) of Section 179, whenever the contingency stated in Section 60(2) arises.

35. Interestingly there are separate provisions both in Part II and Part III of IBC, 2016 ousting the jurisdiction of civil courts. While Section 63 contained in Part II bars the jurisdiction of a civil court in respect of any matter on which NCLT or NCLAT will have jurisdiction, Section 180 contained in Part III bars the jurisdiction of civil courts in respect of any matter on which DRT or DRAT has jurisdiction. But curiously there is something more in Section 180 than what is found in Section 63, which can be appreciated if both are presented in a tabular column.

Section 63	***Section 180***
No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.	*(1) No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal has jurisdiction under this Code.* *(2) No injunction shall be granted by any court, tribunal or authority in respect of any*

	action taken, or to be taken, in pursuance of any power conferred on the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal by or under this Code.

Though what is found in Sub-section (2) of Section 180 is not found in the corresponding provision in Part II namely, Section 63, a similar provision is incorporated in an unrelated provision namely Section 64, which primarily deals with expeditious disposal of applications. Thus, there appears to be some mix-up. However, we are not concerned about the same in this case and we have made a reference to the same only because of Sub-section (4) of Section 60, vesting upon the NCLT, all the powers of the DRT.

36. From a combined reading of Sub-section (4) and Sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the

government under the provisions of MMDR Act, 1957 and the Rules issued there-under. The only provision which can probably throw light on this question would be Sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase ***"arising out of or in relation to the insolvency resolution"*** appearing in Clause (c) of Sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal

before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression *"operational debt"* under Section 5(21), making the Government an *"operational creditor"* in terms of Section 5(20). The moment the dues to the Government are crystalised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.)

37. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty bound under Section 20(1) to preserve the value of the property of the Corporate Debtor and that the word

"property" is interpreted in Section 3(27) to include even actionable claims as well as every description of interest, present or future or vested or contingent interest arising out of or incidental to property and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the Corporate Debtor.

38. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18 (f) (vi) reads as follows:-

> *"18. Duties of interim resolution professional. - The interim resolution professional shall perform the following duties, namely:-*
> *(a) …*
> *(b)…*
> *(c) …*
> *(d)…*

(e)…

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i)…

(ii)…

(iii)…

(iv) …

(v)…

(vi) assets subject to the determination of ownership by a court or authority;

(g) …

Explanation. - For the purposes of this section, the term 'assets' shall not include the following namely:-

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator."

39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, ***subject to the determination of ownership by a court or other***

authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in ***judicial, quasi-judicial and arbitration proceedings***. Section 25(1) and 25(2)(b) reads as follows:

> *"25.* ***Duties of resolution professional*** *–*
> *(1) It shall be the duty of the resolution professional* ***to preserve and protect the assets of the corporate***

> ***debtor***, *including the continued business operations of the corporate debtor.*
> *(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-*
> *(a).....*
> *(b) represent and act on behalf of the corporate debtor with third parties,* ***exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings."***

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

41. In fact the Resolution Professional in this case appears to have understood this legal position correctly, in the initial stages. This is why when the Government of Karnataka did not

grant the benefit of deemed extension, even after the expiry of the lease on 25.05.2018, the Resolution Professional moved the High Court by way of a writ petition in WP No. 23075 of 2018. The prayer made in WP No. 23075 of 2018 was for a declaration that the mining lease should be deemed to be valid upto 31.03.2020. If NCLT was omnipotent, the Resolution Professional would have moved the NCLT itself for such a declaration. But he did not, as he understood the legal position correctly.

42. After the filing of the first writ petition (WP No. 23075 of 2018), the Government of Karnataka passed an order dated 26.09.2018 rejecting the claim. Therefore the Resolution Professional, representing the Corporate Debtor filed a memo before the High Court seeking withdrawal of the writ petition "***with liberty to file a fresh writ petition".*** However the High Court, while dismissing the writ petition by order dated 28.09.2018 was little considerate and it disposed of the writ petition as withdrawn with liberty to take recourse to appropriate remedies in accordance with law. Perhaps taking

advantage of this liberty, the Resolution Applicant moved the NCLT against the order of rejection passed by the Government of Karnataka. If NCLT was not considered by the Resolution Professional, in the first instance, to be empowered to issue a declaration of deemed extension of lease, we fail to understand how NCLT could be considered to have the power of judicial review over the order of rejection.

43. The fact that the Government of Karnataka agreed in the second writ petition WP No. 5002 of 2019 to go back to the NCLT and contest the Miscellaneous Application filed by the Resolution Professional, would not tantamount to conceding the jurisdiction of NCLT. In any case a tribunal which is the creature of a statute cannot be clothed with a jurisdiction, by any concession made by a party.

44. A lot of stress was made on the effect of Section 14 of IBC, 2016 on the deemed extension of lease. But we do not think that the moratorium provided for in Section 14 could have any impact upon the right of the Government to refuse the extension of lease. The purpose of moratorium is only to

preserve the status quo and not to create a new right. Therefore nothing turns on Section 14 of IBC, 2016. Even Section 14 (1) (d), of IBC, 2016, which prohibits, during the period of moratorium, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, will not go to the rescue of the corporate debtor, since what is prohibited therein, is only the right not to be dispossessed, but not the right to have renewal of the lease of such property. In fact the right not to be dispossessed, found in Section 14 (1) (d), will have nothing to do with the rights conferred by a mining lease especially on a government land. What is granted under the deed of mining lease in ML 2293 dated 04.01.2001, by the Government of Karnataka, to the Corporate Debtor, was the right to mine, excavate and recover iron ore and red oxide for a specified period of time. The Deed of Lease contains a Schedule divided into several parts. Part-I of the Schedule describes the location and area of the lease. Part-II indicates the liberties and privileges of the lessee. The restrictions and conditions subject

to which the grant can be enjoyed are found in Part-III of the Schedule. The liberties, powers and privileges reserved to the Government, despite the grant, are indicated in Part-IV. This Part-IV entitles the Government to work on other minerals (other than iron ore and red oxide) on the same land, even during the subsistence of the lease. Therefore, what was granted to the Corporate Debtor was not an exclusive possession of the area in question, so as to enable the Resolution Professional to invoke Section 14 (1) (d). Section 14 (1) (d) may have no application to situations of this nature.

45. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non judice*.

Question No. 2

46. The second question that arises for our consideration is as to whether NCLT is competent to enquire into allegations of fraud, especially in the matter of the very initiation of CIRP.

47. This question has arisen, in view of the stand taken by the Government of Karnataka before the High Court that they chose to challenge the order of the NCLT before the High Court, instead of before NCLAT, due to the fraudulent and collusive manner in which the CIRP was initiated by one of the related parties of the Corporate Debtor themselves. In the writ petition filed by the Government of Karnataka before the High Court, it was specifically pleaded (i) that the Managing Director of the Corporate Debtor entered into an agreement on 06.02.2011 with one M/s. D. P. Exports, for carrying out mining operations on behalf of the Corporate Debtor and also for managing its affairs and selling 100% of the extracted iron ore; (ii) that the said M/s. D. P. Exports was a partnership firm of which one Mr. M. Poobalan and his wife were partners; (iii) that another agreement dated 11.12.2012 was entered into

between the Corporate Debtor and a proprietary concern by name M/s. P. & D. Enterprises, of which the very same person namely, Mr. M. Poobalan was the sole proprietor; (iv) that the said agreement was for hiring of machinery and equipment; (v) that a finance agreement was also entered into on 12.12.2012 between the Corporate Debtor and a company by name M/s. Udhyaman Investments Pvt. Ltd., represented by its authorized signatory Mr. M. Poobalan; (vi) that there were a few communications sent by the said Mr. Poobalan to various authorities, claiming himself to be the authorized signatory of the Corporate Debtor; (vii) that an MOU was entered into on 16.04.2016 between the Corporate Debtor and M/s. Udhyaman Investments Pvt. Ltd., represented by the said Mr. Poobalan, whereby the Corporate Debtor agreed to pay Rs. 11.5 crores; (viii) that the said agreement was purportedly executed at Florida, but witnessed at Chennai; (ix) that Mr. Poobalan even communicated to the Director, Department of Mines & Geology as well as the Monitoring Committee, taking up the cause of the Corporate Debtor as its authorized

signatory; (x) that the CIRP was initiated by M/s. Udhyaman Investments Pvt. Ltd. represented by its authorized signatory, Mr. Poobalan; (xi) that the Resolution Applicant namely, M/s. Embassy Property Development Pvt. Ltd. as well as the Financial Creditor who initiated CIRP namely, M/s. Udhyaman Investments Pvt. Ltd. are all related parties and (xii) that Mr. Poobalan had not only acted on behalf of the Corporate Debtor before the statutory authorities, but also happened to be the authorized signatory of the Financial Creditor who initiated the CIRP, eventually for the benefit of the Resolution Applicant which is a related party of the Financial Creditor.

48. In the light of the above averments, the Government of Karnataka thought fit to invoke the jurisdiction of the High Court under Article 226 without taking recourse to the statutory alternative remedy of appeal before the NCLAT. But the contention of the appellants herein is that allegations of fraud and collusion can also be inquired into by NCLT and NCLAT and that therefore the Government could not have bypassed the statutory remedy.

49. The objection of the appellants in this regard is well founded. Section 65 specifically deals with fraudulent or malicious initiation of proceedings. It reads as follows:

> *"65.* ***Fraudulent or malicious initiation of proceedings****. – (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees."*

50. Even fraudulent tradings carried on by the Corporate Debtor during the insolvency resolution, can be inquired into by the Adjudicating Authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is

initiated fraudulently ***"for any purpose other than for the resolution of insolvency or liquidation".***

51. Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely within the mischief addressed by Section 65(1). Therefore, it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61.

Conclusion

52. The upshot of the above discussion is that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under MMDR Act, 1957 and the rules issued thereunder, especially when

the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. Hence, the High Court was justified in entertaining the writ petition and we see no reason to interfere with the decision of the High Court. Therefore, the appeals are dismissed. There will be no order as to costs.

.....J
(Rohinton Fali Nariman)

.....J
(Aniruddha Bose)

.....J
(V. Ramasubramanian)

New Delhi
December 03, 2019.