

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-11539-2020 (O&M)

Date of decision: 18.02.2021

GURJEET SINGH JOHAR AND ANR

...Petitioners

Versus

UNION OF INDIA AND ORS

...Respondents

CWP-11719-2020 (O&M)

GURJEET SINGH JOHAR AND ORS

...Petitioners

Versus

UNION OF INDIA AND ORS

...Respondents

CWP-11688-2020 (O&M)

SANJAY GUPTA

...Petitioner

Versus

UNION OF INDIA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Sangram Singh Saron, Advocate,
Ms. Roohina Dua, Advocate and
Mr. Abhimanyu Bhandari, Advocate
for the petitioner(s).

Mr. Navkiran Singh, Advocate
for respondent No.4 to 55 and 58 to 68
(CWP-11719-2020).

Mr. Arun Gosain, Standing Government Counsel
for Union of India-respondent No.1 and 2.

Mr. Sahil Sharma, DAG, Punjab.

Mr. M.L.Sharma, Advocate
for respondent No. 4 and 5
(CWP-11688-2020, CWP-11539-2020).

Mr. Karan Nehra, Advocate
for respondents No.56 and 57 (CWP-11719-2020).

ANIL KSHETARPAL, J.

By this order CWP No.11539, 11688 and 11719 involving a common question shall stand disposed of. Counsels for the parties are also *ad idem* that these writ petitions can be disposed of by a common order.

The question is “whether this Court should entertain the writ petitions against the orders passed under Section 27 of the Consumer Protection Act, 1986 (hereinafter referred to as the '1986 Act') by the Punjab State Dispute Redressal Commission (PSDRC) particularly when a statutory remedy of appeal under Section 27-A is available before the National Consumer Dispute Resolution Commission (NCDRC).”

One of the biggest evils faced by the Judiciary is 'forum shopping'. In the considered view of this Court, this is a classical case of the same. It is apparent from the reading of the order dated 10.08.2020 that the petitioners filed a writ petition in Hon'ble the Supreme Court. Before the listing of the aforesaid writ petition, the petitioners filed a writ petition No.11539 of 2020 in the High Court while giving an undertaking to withdraw the writ petition filed before Hon'ble the Supreme Court. Still further, the petitioners themselves have placed on file a decision of Three Member Bench of NCDRC laying down that proceedings under Section 27 cannot be stayed on account of an order passed by the National Company Law Tribunal. It

has been held that moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 will not result in stay of proceedings under Section 27 of the 1986 Act. Such practice of forum shopping is deprecated in the sternest words. All such practices are required to be condemned.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper books. Learned counsel for the petitioners while relying upon the judgments in **Whirpool Corporation Vs. Registrar of Trademarks Mumbai and others, (1998) 8 SCC 1** and **Maharashtra Chess Association Vs. Union of India, 2019 SCC online Supreme Court 932** and some other judgments contends that Hon'ble the Supreme Court has laid down that the writ petitions can be entertained even when an alternative remedy is available, if the Court finds that the writ petition has been filed for the enforcement of fundamental rights or where there has been a violation of the principle of natural justice or where the order or the proceedings are wholly without jurisdiction or the vires of a statute is being challenged. Learned counsel for the petitioners attempts to impress upon this Court that the proceedings before the State Consumer Commission are without jurisdiction because the proceedings for insolvency have commenced and therefore, no proceeding including the criminal prosecution can continue. Learned counsel contends that Section 14 of the Insolvency and bankruptcy Code, 2016, provides for a moratorium, which includes criminal

prosecution.

This Court has considered the submissions of learned counsel and finds no substance therein. It is important to note here that a Coordinate Bench in CWP No.9079 of 2020 (Pranab Ansal Vs. State Consumer Dispute Redressal Commission Punjab) has already held that in view of the statutory remedy of appeal, it will not be appropriate for the High Court to entertain a writ petition. In any case, this Court does not find that the proceedings before the State Commission are without jurisdiction. Under the 1986 Act, the State Commission does have the power to proceed under Section 27, if the order passed in the complaint has not been complied with. Section 27 of the 1986 Act, lays down the penalties including imprisonment. Hence, the proceedings before the State Commission cannot be said to be 'wholly without jurisdiction', this is also an observation made in **Whirpool Corporation case (supra)**.

Next judgment relied upon by learned counsel for the petitioner is in **Maharashtra Chess Association case (supra)**. In the aforesaid judgment, Hon'ble the Supreme Court was examining the correctness of an order passed by the Bombay High Court holding that the writ petition before it was not maintainable in view of exclusion of jurisdiction of all Courts except the Courts at Chennai. In the aforesaid case, Hon'ble the Supreme Court held that the Bombay High Court failed to examine the case holistically. The Court further held that the High Court abdicated its responsibility merely due to the existence of a

privately negotiated document ousting its jurisdiction. The Court further observed in para 30 of the judgment that the High Court may decline to exercise jurisdiction under Article 226 by invoking the principle of forum non conveniens in appropriate cases. Hence, the aforesaid judgment, with greatest respect, does not lay down as a ratio decidendi that a writ petition is required to be entertained even if an effective alternative remedy is available.

There is no doubt that NCDRC is competent to examine and will decide holistically the plea sought to be taken in these writ petitions. Merely because Three Member Bench of NCDRC has already taken a view to the contrary will not by itself be sufficient to entertain the writ petition under Article 226.

Keeping in view the aforesaid facts, these writ petitions are disposed of by relegating the petitioners (in each of the writ petition) to the alternative remedy available before the NCDRC. The writ petitioner(s) in all the three writ petitions are burdened with a cost of Rs.2 lakh with a view to desist such attempts. The cost shall be deposited in the 'Poor Patients Welfare Fund' of the Post-graduate Institute of Medical Education and Research (PGIMER), Chandigarh, personally or through its website “www.pgimer.edu.in”.

Disposed of.

18.02.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)

JUDGE

Yes / No
Yes / No