

Insolvency and Bankruptcy Board of India Vs. Lalit Kumar Jain & Ors.

Transfer Petition (Civil) No(s). 1034 of 2020

2020-01-01 | L. NAGESWARA RAO · HEMANT GUPTA · AJAY RASTOGI

Repository ID: F2J-C-1806

Full judgment text

Insolvency and Bankruptcy Board of India Vs. Lalit Kumar Jain & Ors.

[Transfer Petition (Civil) No(s). 1034 of 2020]

[Transfer Petition(s) (Civil) No(s). 1043/2020]

[Transfer Petition(s) (Civil) No(s). 1035/2020]

[Transfer Petition(s) (Civil) No(s). 1038/2020]

[Transfer Petition(s) (Civil) No(s). 1044/2020]

[Transfer Petition(s) (Civil) No(s). 1027/2020]

[Transfer Petition(s) (Civil) No(s). 1029/2020]

[Transfer Petition(s) (Civil) No(s). 1036/2020]

[Transfer Petition(s) (Civil) No(s). 1030/2020]

[Transfer Petition(s) (Civil) No(s). 1142/2020]

[Transfer Petition(s) (Civil) No(s). 1147/2020]

[Transfer Petition(s) (Civil) No(s). 1146/2020]

[Transfer Petition(s) (Civil) No(s). 1148/2020]

1. The Insolvency and Bankruptcy Board of India has filed the above Transfer Petitions under Article 139 (A) read with Article 142 of the Constitution of India seeking transfer of the Writ Petitions filed before High Courts to this Court.

2. By a Notification dated 15.11.2019, the Ministry of Corporate Affairs, Government of India in exercise of its power conferred under Section 1(3) of the Insolvency and Bankruptcy Code, 2016 brought into force the following provisions of the Insolvency and Bankruptcy Code, 2016 insofar as they related to 'personal guarantors to corporate debtors' with effect from 01.12.2019: - i. Clause (e) of Section 2; ii. Section 78 (except with regard to fresh start process) and Sections 79; iii. Sections 94 to 187 (both inclusive); iv. Clause (g) to Clause (i) of sub-section (2) of Section 239 v. Clause (m) to Clause (zc) of sub-section (2) of Section 239; vi. Clause (zn) to Clause (zs) of sub-section (2) of Section 240; and vii. Section 249.

3. Writ Petitions were filed in the High Court of Delhi and other High Courts challenging the Notification dated 15.11.2019 and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The Writ Petitioners also sought a declaration that Section 95, 96, 99, 100, 101 of the Insolvency and Bankruptcy Code, 2016 are unconstitutional in so far as they apply to personal guarantors of corporate debtors.

The Writ Petitions filed in the Delhi High Court are scheduled to be heard finally on 10.11.2020. The Petitioner contended that several Writ Petitions have been filed in the other High Courts. The Petitioner requests for the transfer of the Writ Petitions from all the High Courts to this Court to avoid the confusion caused by possible divergence of opinions expressed by the High Courts.

4. Ms. Madhavi Divan, learned Additional Solicitor General appearing for the Petitioner submitted that in view of the importance of the matter, it is imminent that all the Writ Petitions are transferred to this Court for an early resolution of the dispute. The learned Additional Solicitor General submitted that different opinions by the High Courts before which the Writ Petitions are pending would lead to confusion. The learned Solicitor General supported the submissions of the learned Additional Solicitor General and urged

that the dispute pertaining to the validity of the Notification dated 15.11.2019 needs to be decided expeditiously. According to learned Solicitor General, the best course would be to transfer the cases to this Court where the dispute can be finally resolved.

5. The learned counsel appearing for the Respondents- Writ Petitioners in the High Courts objected to the transfer of the Writ Petitions on the following grounds: -

a) That the Writ Petitions in the Delhi High Court are ready for hearing as they are listed on 10.11.2020 for final disposal. Therefore, the Delhi High Court should be permitted to complete the hearing.

b) If the High Courts decide the matter, this Court will have the benefit of their opinion on the subject matter of the dispute.

c) That the Insolvency and Bankruptcy Board of India cannot maintain these Transfer Petitions. Transfer Petitions could have been filed by the Union of India.

d) That transfer of the Writ Petitions from various High Courts to this Court would not hasten the process and lead to early disposal. On the other hand, the Writ Petitions will remain pending in this Court for a long period of time.

6. After hearing the submissions made by the parties, we are of the considered opinion that the Writ Petitions that are pending in the High Courts pertaining to the challenge to the Notification dated 15.11.2019 and related issues have to be transferred to this Court. Transfer of the Writ Petitions to this Court would avoid conflicting decisions by the High Courts which are in seisin of the Writ Petitions.

The Insolvency and Bankruptcy Code is at a nascent stage and it is better that the interpretation of the provisions of the Code is taken up by this Court to avoid any confusion, and to authoritatively settle the law. Considering the importance of the issues raised in the Writ Petitions which need finality of judicial determination at the earliest, it is just and proper that the Writ Petitions are transferred from the High Courts to this Court.

7. We direct the transfer of the Writ Petitions giving rise to the above Transfer Petitions which are pending before the High Courts to this Court. The Registries of the High Courts are directed to transmit the records of the Writ Petitions forthwith.

8. As we have transferred the Writ Petitions filed challenging the Notification dated 15.11.2019 and related issues to this Court, we direct that no further Writ Petitions involving the challenge to the Notification dated 15.11.2019 by which Part III of the Insolvency and Bankruptcy Code, 2016 and other provisions in so far as they relate to personal guarantors to corporate debtors have been brought into force shall be entertained by any High Court. The interim orders passed by the High Courts, if any, shall continue till further orders.

9. The Transfer Petitions are allowed, accordingly.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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