

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
TRANSFER PETITION (C) No. of 2020

IN THE MATTER OF:
K I C FOOD PRODUCTS PVT. LTD. ...PETITIONER
Versus
UNION OF INDIA & ANOTHER ...RESPONDENTS

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
TRANSFER PETITION (C) No. of 2020
(Under Article 139A of the Constitution)**

IN THE MATTER OF:

TRANSFER PETITION UNDER ARTICLE 139 A (1) OF THE CONSTITUTION OF INDIA READ WITH ORDER XL OF THE SUPREME COURT RULES, 2013, FOR TRANSFER OF WRIT PETITION (Civil) No. 310/2020 TITLED AS "K I C FOOD PRODUCTS PVT. LTD. v. UNION OF INDIA AND ANR. WHICH IS PENDING BEFORE THE HON'BLE HIGH COURT OF DELHI TO THIS HON'BLE COURT.

To,
The Hon'ble Chief Justice of India and
His Companion Judges of the
Supreme Court of India

The humble petition of the
petitioner above named

MOST RESPECTFULLY SHOWETH: -

1. The petitioner is filing the present Transfer Petition under Article 139A(1) of the Constitution of India read with Order XL of the Supreme Court Rules, 2013, for transfer of Writ Petition (Civil) No. 310/2020 pending before the Hon'ble Delhi High Court to be heard along with W.P.(C) No. 26 of 2020 titled as 'Manish Kumar vs. Union Of India and another' along with other batch matters pending before this Hon'ble Court.
2. The petitioner humbly submit that same or substantially the same questions of law, relating to the constitutional validity of the S. 3 of Insolvency and Bankruptcy (Amendment), 2019 Ordinance, are pending adjudication before this Hon'ble Court

in W.P.(C) No. 26 of 2020 and other batch of matters. It is accordingly prayed that this Hon'ble Court may be pleased to exercise its powers under Article 139A of the Constitution of India and withdraw to itself Writ Petition (Civil) No. 310/2020 pending before the Hon'ble Delhi High Court and dispose of the same by determining the questions of law arising in Writ Petition (Civil) No. 310/2020 and the other batch matters.

BRIEF FACTS OF THE CASE:

3. The petitioner is a private limited company registered under the provisions of the Companies Act, 1956. The petitioner is an allottee who acting on various promises, assurance and representations made by the builder namely, IREO Residencies Company Pvt. Ltd. (IREO) was induced in to applying for a residential unit in its project Grand Hyatt Gurgaon Residences on 26.03.2013. The promises, assurance and representations made by IREO Residencies Company Pvt. Ltd. at that time included, inter alia, that the possession of the said unit shall be delivered to the petitioner on or before 26.03.2017.
4. IREO was deceiving the petitioner by concealing material facts about the development and construction of the residential project and due to which the Petitioner was induced into paying total sum of Rs.4,23,74,745.59, towards the said unit. Even after receiving the said amount from the Petitioner, IREO defaulted in handing over the possession of the Unit within stipulated time period.

5. Aggrieved by the acts of IREO the Petitioner through Legal Notice dated 26.02.2018 called upon the Corporate Debtor to refund the total amount of Rs.4,23,74,745.59 but IREO defaulted in repayment of the same. On enquiries it transpired that IREO is neither in a position to handover the possession of the said Unit nor refund the money paid to it.
6. Being a Financial Creditor, on 03.10.2019 the Petitioner approached the National Company Law Tribunal, Delhi by way of application under Section 7 of the Insolvency and Bankruptcy Code against IREO in IB/2758/2019. Notice was issued in the said petition on 29.10.2019 and it was pending an order of admission. Thereafter the Respondent appeared and also filed its reply, to which a rejoinder has also been filed by the Petitioner.
7. On 28.12.2019, respondent passed the said IBC (Amendment) Ordinance 2019, curtailing the fundamental rights of the allottees including the petitioner by putting unreasonable classification within the Financial Creditors which are not only arbitrary but also against the Object of the Insolvency and Bankruptcy, Code 2016 (IBC). The relevant portion of S. 3 of the 2019 Amendment which seeks to amend S. 7 of the IBC is extracted as under;

“

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.

....”

8. It is pertinent to mention that after the aforesaid amendment in Section 7 of the IBC, petitioner is required to fulfill additional requirement which was not in the Code initially when the Petitioner had filed the case nor it is provided for any other financial creditor. The failure to comply with the said requirement in case of pending applications of home buyers are deemed to be withdrawn before their admission.
9. Article 139A(1) of the Constitution of India empowers this Hon’ble Court to transfer and withdraw a pending case before any High Court to itself when the case pending before the High Court involves the same or substantially the same questions of law as any case pending before this Hon’ble Court. The petitioner submits that the same or substantially the same questions of law fall for consideration before this

Hon'ble Court in W.P.(C) No. 26 of 2020 titled as 'Manish Kumar vs. Union Of India and another' and connected matters and Writ Petition (Civil) No. 310/2020 pending before the Hon'ble Delhi High Court. It is further submitted that the common questions arising in the said petitions are substantial questions of general importance.

10. It is accordingly prayed that this Hon'ble Court may exercise its powers under Article 139A to transfer Writ Petition (Civil) No. 310/2020 pending before the Hon'ble Delhi High Court to itself and dispose of the same after hearing the parties, on the following grounds, each of which is without prejudice to the other:

GROUND

- A. Because the same or substantially the same questions of law arise in Hon'ble Court in W.P.(C) No. 26 of 2020 and the other batch matters pending before this Hon'ble Court on the one hand and Writ Petition (Civil) No. 310/2020 pending before the Hon'ble Delhi High Court on the other hand.
- B. Because the petitioner's challenge before the High Court of Delhi will not be taken up on merits and would be kept in abeyance till the time this Hon'ble Court decides the challenge to the Amendment of 2019. The petitioner intends to assist this Hon'ble Court in deciding the challenge raised to the amendment in case his Writ Petitioner is withdrawn before this

Hon'ble and tagged with the connected Writ petitions pending before this Hon'ble Court.

- C. Because the withdrawal of the petitioner's writ petition before the Hon'ble High Court of Delhi to this Hon'ble Court would avoid multiplicity of proceedings on the same issue.
 - D. That since the judgment of this Hon'ble Court would be dispositive of the issues raised and prayers sought in its Writ Petition before the Hon'ble High Court of Delhi; prejudice would be caused to the petitioner if it were unable to address this Hon'ble Court on the common issues pending adjudication before this Hon'ble Court.
 - E. That no prejudice will be caused to anyone if petitioner's Writ Petition before the Hon'ble High Court of Delhi is transferred to the Hon'ble Supreme Court. As a matter of fact, formal notice is yet to be issued in the said petition.
 - F. Because it is imperative that the petitioner's writ petition before the Hon'ble High Court Delhi is transferred to this Hon'ble Court in order to avoid wastage of judicial time and the matter is authoritatively decided by this Hon'ble Court.
 - G. Because the Hon'ble High Court Delhi has not passed any order on merits of the case in the Writ Petition before the Hon'ble Delhi High Court and it is in the fitness of things that the matter is transferred.
11. The Petitioner has not filed any other similar petition seeking the same relief in any other High Courts or this Hon'ble Court.

12. The present Transfer Petition is made bona fide and in the interest of justice.

PRAYERS

It is, therefore, most respectfully prayed that this Hon'ble Court may be graciously pleased to:

- (a) direct the transfer of Writ Petition (Civil) No. 310/2020 pending before the Hon'ble Delhi High Court titled as KIC Food Products Pvt. Ltd. v. Union of India and Anr. to this Hon'ble Court and hear and dispose of the same along with Writ Petition (C) No. 36/2020 and connected matters; and
- (b) Pass such other and further order/s that this Hon'ble Court may deem fit and appropriate in the interests of justice or the facts of the case