2025:KER:96165

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. NATARAJAN

FRIDAY, THE 12TH DAY OF DECEMBER 2025 / 21ST AGRAHAYANA, 1947

R.P. NO.990 OF 2025

(AGAINST THE ORDER/JUDGMENT DATED 10.06.2025
IN OP(C) NO.800 OF 2025 OF HIGH COURT OF KERALA)

REVIEW PETITIONER/FIRST RESPONDENT:

T.BEENA, AGED 63 YEARS, D/O V.THIRUVENKITAM
OF SEEMATISADANAM, K.K.ROAD, KOTTAYAM,
NOW RESIDING AT H.NO.71/1530C, EARTH,
SANSKRITI GARDEN, PERANDOOR ROAD, OPP.CHOICE PARK,
ELAMAKKARADESOM, EDAPPILLY SOUTH VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT, ELAMAKKARA P.O., PIN - 682 026

BY ADVS.
SRI.S.SHYAM
SRI.T.K.VIPINDAS

RESPONDENTS/PETITIONERS AND RESPONDENTS 2 AND 3:

1 VYSALI PHARMACEUTICALS LTD.,
REPRESENTED BY ITS LIQUIDATOR, KIZHAKKEKKARA KURIAKOSE JOSE,
34/754, KANNANTHODATH ROAD, EDAPPALLY, PIN - 682 024

2 KIZHAKKEKKARA KURIAKOSE JOSE, AGED 60 YEARS,
LIQUIDATOR, VYSALI PHARMACEUTICALS LTD.,
HAVING ITS REGISTERED OFFICE AT 34/754, KANNANTHODATH ROAD,
EDAPPALLY, KOCHI, PIN - 682 024

3 DR.A.D.KRISHNAN, AGED 78 YEARS,
S/O A.D.NAMBOOTHIRIPPAD, RESIDING AT SWARAM,
GOVT.HIGH SCHOOL ROAD, EDAPPALLAY, COCHIN,
PIN - 682 024

4 KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD.,
REPRESENTED BY CHAIRMAN, T.C.11/266, KESTON ROAD,
KOWDIAR, TRIVANDRUM, PIN - 695 003

BY ADVS.
SMT.D.REETHA
SRI.SHERRY SAMUEL OOMMEN
SHRI.NAVEEN D. PALAKAL
SRI.SUKUMAR NAINAN OOMMEN
SMT.ASWATHI MENON C.
SRI.P.A.MOHAMMED ASLAM
SRI.P.V.VINOD (BENGALAM)
SHRI.AKHIL K.M.
SMT.ANJALI NAIR

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 12.8.2025, JUDGMENT RESERVED ON 4.12.2025, THE COURT ON 12.12.2025, DELIVERED THE FOLLOWING:

Judgment

(Dated: 12th December, 2025)

This review petition is filed by the petitioner/1st respondent in O.P.(C) No.800 of 2025, for review of the Order dated 10.06.2025 passed by this court.

2. The counsel for the petitioner has contended that the respondent herein filed O.P.(C) No.800 of 2025, challenging the order passed by the Sub Court, Ernakulam, in I.A.No.3 of 2025 in O.S. No.41 of 2025, for having granted an ad interim injunction against the respondents herein. The same was challenged by the respondent No.1 herein by filing O.P.(C) No.800 of 2025 along with respondent No.2, who is the liquidator of the respondent No.1, the company, and the same was allowed by this court and set aside the order of granting temporary injunction vide impugned order dated 10.06.2025. The petitioner is the respondent in O.P.(C) No.800 of 2025, and the plaintiff in the original

suit filed this review petition, contending that there is an error on the face of the record, that the very claim petition made by the respondent before the National Company Law Tribunal (for short 'NCLT') is not maintainable. Therefore, considering Section 63 of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC' Code), holding that the suit is barred by law under Section 231 of IBC is not sustainable, as the very claim petition before the NCLT is not maintainable. Therefore, the petitioner is entitled to file suit against the respondent company and the liquidator.

3. The second contention of the learned counsel for the petitioner is that, even as per Section 33(5) of the IBC Code, for filing the petition or a suit, the prior permission of the National Company Law Tribunal(NCLT) is required. Therefore, without obtaining permission of the NCLT, the respondent filed the original petition before this court, which is not maintainable. Therefore, on this ground, the impugned

order deserves to be reviewed and allow the parties to approach the civil court for arguing on the maintainability of the suit, and till then, the interim order granted by the Sub Court shall be continued, hence prayed for allowing the petition.

4. *Per contra*, learned counsel for the respondent liquidator objects to the petition, contending that if the money claim made by the parties before the NCLT, is not maintainable, they have to take their contention before the NCLT, but not before the Civil Court. Therefore, the suit itself is not maintainable; there is a bar under Section 231 of the Code. The counsel for the respondent further contended that the prior permission was not required to be obtained for filing the petition by the liquidator, as the very petition filed by the respondent was under section 227 of the Constitution of India, where it invoked the superintendence power of the High Court, the Court can interfere even without filing any petition before the Court. Such being the case, the petition filed by the

respondent is not a statutory appeal or petition, but it is under Section 227 of the Constitution of India. Therefore, the very review petition is not maintainable, and there is no error apparent on the face of the record for reviewing the judgment passed by this Court in O.P.(C) No. 800 of 2025. Hence, prayed for the dismissal of the review petition.

5. Having heard the learned counsel for the petitioner, counsel for the respondent, and perused the records.

6. The points that arise for consideration are:

(i) Whether the judgment passed by this court in O.P.(C) No.800 of 2025 deserves to be reviewed?
(ii) What order?

7. The counsel for the review petitioner has contended that, as per Section 3, sub-Section (6)(a) of the Insolvency and Bankruptcy Code, sub-Section 6(a) means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured. Therefore, it is contended that the claim does not pertaining to money. Therefore, the very petition

pending before the NCLT is not maintainable. Hence, the bar under Section 231 of the IBC is not applicable. Therefore, the Civil Court can entertain the suit.

8. By looking into Section 63 of the IBC, which reads as under:

> ***63. Civil Court not to have jurisdiction***. *- 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.*

9. Section 231 of the Code of IBC, is explicitly bars entertaining the suit by the Civil Court, which is as under:

> ***231. Bar of jurisdiction.*** *- No civil Court shall have jurisdiction in respect of any matter in which the [Adjudicating Authority or the Board] is empowered by, or under, this Code to pass any order and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such [Adjudicating Authority or the Board] under this Code.*

10. Invoking Sections 63 and 231 of IBC, the Civil Court has

no jurisdiction to entertain any suit when the matter is already pending before the Company Law Tribunal, *i.e.,* NCLT. Therefore, the contention of the petitioner's counsel is that the claim made by the respondent pending before the National Company Law Tribunal is not sustainable. If at all any grievance, the petitioner has to approach the Company Law Appellate Tribunal, but not before the Civil Court. Therefore, the order passed by this court in O.P.(C) No.800 of 2025 is required to be reviewed.

11. Another contention of the counsel is that the respondent did not obtain permission under Section 33 of the Code.

Section 33(5) and Proviso to the section reads as under:

> *(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.*
>
> *Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.*

12. On a perusal of Section 33, proviso to Section 33(5) of

IBC, where the suit or legal proceedings may be instituted by the liquidator and of the corporate debtor with the prior approval of the adjudicating authority. In this regard, learned counsel for the review petitioner has contended that the official liquidator has not obtained any permission from the NCLT. Therefore, the original petition filed by the respondent in O.P.(C) No.800 of 2025 itself is not maintainable; hence, allowing the original petition is not surviving.

13. On the other hand, it is an admitted fact that the very same petitioner did not obtain any permission from the NCLT for filing the suit against the liquidation debtor or against the corporate debtor, or against the liquidator of the corporate debtor company. Therefore, the very suit itself is not maintainable before the Trial Court, in view of Section 33(5) of the IBC Act, as well as the bar under Section 63 of the IBC Code; no civil court has jurisdiction to entertain any suit or any proceedings in respect of the matter on which NCLT has jurisdiction.

Therefore, if any suit is filed, and any order is passed by the Trial Court, in such a matter, it constitutes a patent illegality as it is made by granting an injunction by ignoring Section 33(5) and Section 63 of the IBC. This Court gets jurisdiction to interfere under Article 227 of the Constitution of India, where this court has been vested with the superintendent power over the court below.

Therefore, even without any petition filed by the respondent, the court can interfere with the impugned order. Therefore, if the permission is not obtained, that itself is not a ground for reviewing the order of this Court. Hence, I am of the view that the contention of the petitioner, the order to be reviewed, is not sustainable and therefore it is liable to be rejected.

Accordingly, the review petition is hereby dismissed.

Sd/-
K.Natarajan,
Judge

ss

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APPENDIX OF RP NO. 990 OF 2025

RESPONDENT EXHIBITS

Exhibit R1/A	The copy of the Counter affidavit filed by the Review Petitioner/ Respondent No.1 in OP(C) No.800/2025