



2026:KER:2037

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 13TH DAY OF JANUARY 2026 / 23RD Pousha, 1947

WA NO. 50 OF 2026

AGAINST THE JUDGMENT DATED 17.12.2025 IN WP(C) NO.32152
OF 2025 OF HIGH COURT OF KERALA

APPELLANT/WRIT PETITIONER:

MMS STEEL & POWER PRIVATE LIMITED
17/2D, ONGC ROAD, NARANAMANGALAM NARIMANAM P.O.,
NAGORE, NAGAPATNAM DISTRICT, TAMIL NADU -
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE,
PIN - 611002

BY ADV SRI.ISAAC THOMAS

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA
MINISTRY OF CORPORATE AFFAIRS, SHASTRI BHAWAN,
NEW-DELHI - REPRESENTED BY ITS SECRETARY,
PIN - 110001
- 2 MINISTRY OF CORPORATE AFFAIRS
CORPORATE BHAWAN, BMC ROAD, THIRKKAKARA,
ERNAKULAM, KOCHI REPRESENTED BY REGIONAL
DIRECTOR, PIN - 682021
- 3 REGISTRAR OF COMPANIES
CORPORATE BHAWAN, BMC ROAD, THIRKKAKARA,
ERNAKULAM KOCHI, PIN - 682021
- 4 NATIONAL COMPANY LAW TRIBUNAL - KOCHI BENCH
COMPANY LAW BHAVAN, BMC ROAD, KUNNUPURAM,
THIRKKAKARA, P.O, KAKKANAD, ERNAKULAM KOCHI -
REPRESENTED BY ITS DEPUTY REGISTRAR,
PIN - 682021



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- 5 NATIONAL COMPANY LAW TRIBUNAL
BLOCK NO. 3, GROUND 6TH, 7TH & 8TH FLOOR,
C.G.O. COMPLEX, LODHI ROAD, NEW-DELHI -
REPRESENTED BY ITS REGISTRAR, PIN - 110003
- 6 M/S KASARGOD POWER CORPORATION LIMITED
332 BARE VILLAGE, MYLATTI POST, KASARGOD,
KERALA - . REP. BY ITS RESOLUTION PROFESSIONAL,
MR. NETHI MALLIKARJUNA SETTY [IBBI/IPA001/IP-
P01251/2018-2019/11958], PIN - 671123
- 7 NETHI MALLIKARJUNA SETTY
[IBBI/IPA001/IP-P01251/2018-2019/11958] FLAT NO.
101, LAUREL RESIDENCY, PANCHAVATI COLONY,
MANIKONDA, HYDERABAD, TELANGANA, PIN - 500089
- 8 JYOTHI THOTAKURI
FLAT NO. 14, SRI SAI KRISHNA APARTMENTS,
MASAB TANK, HYDERABAD, TELANGANA, PIN - 500028
- 9 SUDHAKAR KOCHERLA
FLAT NO. 14, SRI SAI KRISHNA APARTMENTS, MASAB
TANK, HYDERABAD, TELANGANA, PIN - 500028
- 10 UCO BANK
ASSET MANAGEMENT BRANCH 6-3-1108, GROUND FLOOR,
NAVABHARATH CHAMBERS, RAJ BHAVAN ROAD,
SOMAJIGUDA, HYDERABAD, TELANGANA REPRESENT BY
ITS AUTHORIZED OFFICER, PIN - 500082

BY SRI.TERRY V. JAMES FOR R8 AND R9
SRI. SIBY CHENAPPADY FOR R6 AND R7
SRI. RAMKUMAR FOR R1 TO R3
SRI. DEEPAK JOY K. FOR R10

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
13.01.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

Dated this the 13th day of January, 2026

Soumen Sen, C.J.

The appellant is a financial creditor. The appellant is aggrieved by the judgment of the learned Single Judge whereby the order dated 21 August, 2025 passed by the National Company Law Tribunal (the NCLT), Kochi Bench in IA (IBC) (Plan)/04/KOB/2025 in CP (IPC)20/KOB/2023 was upheld. The decision of the NCLT rejecting the Resolution Plan under Section 31(2) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) was under challenge.

2. The learned counsel for the appellant has submitted that the NCLT disregarded the fact that 100% of the Committee of Creditors (CoC) had voted in favour of the Resolution Plan and that in spite of such unanimity amongst the CoC, the Adjudicating Authority rejected the said plan on irrelevant and extraneous considerations. The NCLT failed to appreciate that, in the event said Resolution



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Plan is not approved and consequential steps are not taken within the time frame prescribed under the IBC, 2016, the creditors may not be in a position to realize any amount. The Resolution Professional (the RP) has also found out a prospective buyer and in the event of any further delay, the buyer may not be able to put his offer before committee.

3. The learned counsel for the private respondents have also submitted that in spite of the unanimity amongst the CoC, the Adjudicating Authority has rejected the Resolution Plan.

4. The essential question that arises for consideration at this stage is whether the learned Single Judge was justified in rejecting the writ petition in view of Section 61(1) of IBC, 2016 which gives a person aggrieved the right to challenge an order passed by the Adjudicating Authority, meaning thereby the NCLT.

5. We have carefully gone through the judgment of the learned Single Judge. It is trite that when an appellate remedy is available and is efficacious, the writ jurisdiction



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under Article 226 of the Constitution of India is not exercised. The exceptions, as mentioned in the judgment of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Pvt. Ltd. Through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Ltd. Through the Director and Others**, (2021 KHC OnLine 6235) are as follows:

“(1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights; (2) where there has been a violation of the principle of natural justice; and (3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

6. There is no inherent lack of jurisdiction insofar as the consideration of the Resolution Plan by the NCLT. An error in the exercise of jurisdiction is clearly distinguishable from an order passed without jurisdiction. There is no inherent lack of jurisdiction on the part of the NCLT in deciding the matter. The NCLT may have given erroneous reasons for rejecting the said Resolution Plan. But such exercise of power does not come within the category “only without jurisdiction” as mentioned in the judgment in



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Ghanashyam Mishra and Sons Pvt. Ltd. (supra).

7. In view thereof, we are not inclined to interfere with the judgment of the learned Single Judge. The appeal stands disposed of. However, this judgment shall not prevent the appellant to prefer an appeal as provided under the IBC, 2016 before the appropriate forum.

8. In view of the fact that the writ jurisdiction has been exercised in lieu of the efficacious alternate remedy available, we are inclined to accept the submissions made on behalf of the learned counsel for the appellant that the time spent before this Court may be excluded for the purpose of filing an appeal. However, having regard to Section 61(2) of the IBC, 2016 which sets the time limit for preferring an appeal, the provisions of Section 14 of the Limitation Act, 1963 cannot apply. However, having regard to the fact that we are satisfied that the appellant has prosecuted the matter with due diligence and that the writ petition was filed immediately after the impugned order was passed by the NCLT, we direct that in the event the appeal



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is preferred within a period of 30 days, the Appellate Authority may accept and decide the matter in accordance with law.

9. It appears that in the impugned judgment, the learned Single Judge, mindful of the fact that the appeal may be time barred, extended similar benefits with an interim order initially granted on 25 August, 2025. We also extend similar benefit to the appellant in respect of any consequential steps that may be taken, for a period of 30 days from today. We make it clear that we have not gone into the merits of the matter.

Sd/-

Soumen Sen
Chief Justice

Sd/-

Syam Kumar V.M.
Judge

ds 13.01.2026