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## CASE COMMENT: EMBASSY PROPERTY DEVELOPMENTS PRIVATE LIMITED V. STATE OF KARNATAKA (2019)

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**Citation:** (2019) SCC Online SC 1542

**Bench:** Justice Rohinton Fali Nariman and Justice S. Ravindra Bhat

### Facts

The judgment in *Embassy Property Developments Private Limited. v. State of Karnataka* (2019)<sup>1</sup> arose at a crucial juncture in the development of India's insolvency jurisprudence. The Insolvency and Bankruptcy Code, 2016 (IBC)<sup>2</sup> had recently been enacted as a comprehensive code to deal with corporate distress, and one of the recurring questions was the extent of jurisdiction of the newly created National Company Law Tribunal (NCLT). This case provided the Supreme Court with an opportunity to clarify the scope of the NCLT's powers, particularly in relation to disputes that involved state discretion and sovereign functions.

The dispute originated from the insolvency of M/s. Tiffins Barytes Asbestos & Paints Ltd. (TBAPL), a company involved in mining operations in the State of Karnataka. TBAPL had been granted mining leases under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act)<sup>3</sup>. When the company entered the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), an Interim Resolution Professional (IRP) was appointed to oversee its operations and safeguard its value. To maintain the company's operations during the insolvency process, the IRP requested the renewal of mining leases from the State of Karnataka.

However, the State Government denied the request, citing statutory violations and irregularities by the corporate debtor. In response to this rejection, the IRP approached the National

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1. *Embassy Property Developments Pvt. Ltd. v. State of Karnataka*, (2019) SCC Online SC 1542.

2. Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016).

3. Mines and Minerals (Development and Regulation) Act, No. 67 of 1957, INDIA CODE (1957)

Company Law Tribunal (NCLT) in Bengaluru, arguing that the renewal of the leases was crucial for the company's continued viability and that the State's refusal would undermine the objectives of the IBC. The NCLT upheld this argument and instructed the State Government to reconsider the lease renewal request.

The State of Karnataka challenged this order before the High Court under Article 226 of the Constitution<sup>4</sup>. It argued that the NCLT had no authority to interfere with the State's discretion under the MMDR Act. The High Court allowed the writ petition and quashed the order of the NCLT. This prompted Embassy Property Developments, a stakeholder in the CIRP, to appeal to the Supreme Court, giving rise to the landmark judgment.

### **Issues Raised**

The case presented two important issues for determination before the Supreme Court:

First, whether the NCLT or NCLAT, as statutory tribunals created under the IBC, have jurisdiction to adjudicate disputes that involve sovereign functions or public law elements, such as the renewal or refusal of mining leases under the MMDR Act.

Second, whether the High Court was justified in exercising its writ jurisdiction under Article 226 despite the fact that the IBC provides an appellate mechanism through which orders of the NCLT can be challenged before the NCLAT and thereafter before the Supreme Court<sup>5</sup>.

### **Contentions**

#### **Contentions of the Appellant**

On behalf of Embassy Property and the resolution professional, it was argued that the powers of the NCLT under the IBC were intended to be wide, covering all matters "arising out of or in relation to" insolvency<sup>6</sup>. They argued that the renewal of the mining leases was not just a public

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4. See generally *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 SCC 407 (discussing the scope and objectives of the IBC).

5. See *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta*, (2021) 7 SCC 209 (clarifying the jurisdictional limits of the NCLT under the IBC).

6. INDIA CONST. art. 226.

law matter but was closely tied to the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor. Without the lease renewal, the company couldn't continue as a going concern, thus undermining the purpose of resolution under the Insolvency and Bankruptcy Code (IBC). Therefore, it was argued that the National Company Law Tribunal (NCLT) had the authority to address the issue and direct the State to act in accordance with the objectives of the IBC.

The appellants further contended that the High Court should not have taken up the writ petition. They emphasized that the IBC is a self-contained code, with an established appellate framework for challenging NCLT orders. They argued that allowing writ petitions during the insolvency process would disrupt the efficiency and timeliness that are central to the IBC's design.

### **Contentions of the Respondent**

The State of Karnataka argued that renewing mining leases falls under the statutory discretion granted by the MMDR Act, which takes into account public interest factors. They asserted that such issues are beyond the scope of the National Company Law Tribunal (NCLT), as its jurisdiction is limited to matters of insolvency, liquidation, and company management. By instructing the State to reassess its decision, the NCLT overstepped its authority, encroaching on matters that should be addressed by constitutional courts.

The State also defended the High Court's exercise of writ jurisdiction. It submitted that the existence of an alternative statutory remedy does not bar the High Court from intervening where a tribunal has acted beyond its jurisdiction<sup>7</sup>. The writ jurisdiction of the High Court under Article 226 is part of the basic structure of the Constitution and cannot be ousted by legislation. Therefore, the High Court's decision to quash the order of the NCLT was justified.

### **Rationale**

The Supreme Court upheld the High Court's ruling and clarified the limits of the National Company Law Tribunal (NCLT)'s jurisdiction. The Court noted that the NCLT and the National Company Law Appellate Tribunal (NCLAT) are statutory bodies, and their authority

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7. See *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 (affirming the constitutional power of High Courts to exercise judicial review despite creation of tribunals).

is confined to what is explicitly granted by the Insolvency and Bankruptcy Code (IBC) and the Companies Act. While these tribunals have extensive powers regarding insolvency and corporate management, they cannot resolve disputes that are inherently public and involve sovereign functions of the State.

The Court highlighted that the renewal or refusal of a mining lease is not simply a commercial matter but is governed by the MMDR Act and involves public policy considerations. Such decisions fall solely within the State's domain and cannot be questioned before a corporate tribunal. Consequently, the NCLT exceeded its jurisdiction by instructing the State to reconsider its decision.

Regarding writ jurisdiction, the Court confirmed that the existence of an appellate process under the IBC does not prevent the High Court from exercising its powers under Article 226. While it acknowledged that High Courts generally should not interfere when alternate remedies are available, the Court clarified that this principle does not apply when a tribunal exceeds its jurisdiction. Judicial review by constitutional courts serves as a vital check against such overreach.

As a result, the Court concluded that the High Court was right to entertain the writ petition filed by the State and to annul the NCLT's order. The Supreme Court dismissed the appeal of Embassy Property Developments.

### **Defects of Law**

While the judgment is sound in principle, it is not free from criticism. One major concern is the lack of a clear test to distinguish between matters that fall within the jurisdiction of the NCLT and those that must be taken to constitutional courts<sup>8</sup>. The Court held that issues involving public law elements lie outside NCLT's powers, but it did not lay down precise criteria for identifying such cases. This creates a zone of ambiguity where future disputes may again result in jurisdictional conflicts and forum shopping.

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8. See *Principal Sec'y, Power Dep't of the State of Arunachal Pradesh v. M/s Siang Power Pvt. Ltd.*, (2022) 2 SCC 451 (reaffirming limits on tribunal jurisdiction in matters involving sovereign functions).

Another defect is the potential for delay. The IBC is designed to be time-bound, with strict deadlines for resolution of insolvency. By requiring parties to approach High Courts for matters involving state discretion, the judgment risks slowing down the insolvency process. Resolution professionals may find it difficult to maintain companies as going concerns if regulatory approvals are delayed in separate proceedings before constitutional courts.

The judgment also creates the possibility of parallel litigation. Some issues relating to insolvency will be adjudicated by the NCLT, while others relating to regulatory approvals will be decided by the High Court. This fragmentation increases complexity and costs, and undermines the efficiency of the IBC<sup>9</sup>.

From a commercial perspective, the ruling may deter resolution applicants in regulated sectors. If crucial operational approvals cannot be secured through the insolvency process itself and require separate litigation, investors may hesitate to participate in resolution plans. This could reduce the attractiveness of distressed companies in sectors like mining and infrastructure, where state permissions are indispensable.

## **Inference**

The *Embassy Property Developments* case is a landmark decision that underscores the constitutional limits of tribunal jurisdiction. By holding that the NCLT cannot adjudicate disputes involving sovereign functions and public law, the Supreme Court preserved the balance of powers between statutory tribunals and constitutional courts. The judgment reinforces the principle that while specialized tribunals are necessary for efficiency and expertise in corporate law, they cannot usurp the role of High Courts and the Supreme Court in reviewing state action.

At the same time, the decision highlights structural gaps in the IBC framework. Insolvency often intersects with regulatory approvals, statutory permissions, and state decisions, yet the tribunals created under the IBC cannot adjudicate such issues. This creates practical challenges, including delays, parallel litigation, and reduced investor confidence. Going forward, reforms

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9. See generally Shreya Somani, *Tribunal Jurisdiction and the IBC: Lessons from Embassy Property*, 12 NUJS L. Rev. 145 (2020).

may be needed to streamline regulatory approvals during insolvency and to provide statutory clarity on the jurisdiction of the NCLT.

Ultimately, the case demonstrates the delicate balance between efficiency in insolvency proceedings and the constitutional mandate of judicial review. It shows that while the IBC seeks to create a fast-track mechanism for corporate rescue, this goal cannot come at the cost of eroding the jurisdictional boundaries that preserve the rule of law and state sovereignty. The *Embassy Property* judgment will continue to be cited as an authority on the limits of tribunal jurisdiction and the enduring role of constitutional courts in safeguarding the separation of powers.