IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 14TH DAY OF JULY 2026 / 23RD ASHADHA, 1948

OP(C) NO. 2718 OF 2023

ORDER DATED 30.03.2022 IA(IBC)/25(KOB)/2022 IN COMPANY PETITION NO.IBA/240/IB/2019(CB) TO THE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH

PETITIONER/RESPONDENT IN THE IA:

THE ERATTUPETTA MUNICIPALITY,
REP. BY ITS SECRETARY-IN-CHARGE
SHEEJAMOL K.
AGED 51 YEARS
ETTILAKKAYAM,
ERATTUPETTA P.O.,
KOTTAYAM DISTRICT.,
PIN - 686121

BY ADV SRI.SUNIL V.MOHAMMED

RESPONDENTS:

1 THE NATIONAL COMPANY LAW TRIBUNAL,
REP. BY ITS REGISTRAR
KOCHI BENCH,
COMPANY LAW BHAVAN,
KAKKANAD, KOCHI.,
PIN - 682030

2 **C.A. MAHALINGAM SURESH KUMAR**
LIQUIDATOR OF M/S. RAIHAN HEALTHCARE PVT. LTD.,
SPP & CO. CHARTERED ACCOUNTANTS,
NO. 27/9, NIVEDH VIKAS,
PANKAJA MILL ROAD, PUIYAKULAM,
COIMBATORE, TAMIL NADU.,
PIN - 641045

BY ADVS. SRI.JOSEPH GEORGE (KANNAMPUZHA)
SRI.A.G.SATHYANARAYANA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD 19.02.2026, THE COURT ON 14.07.2026 DELIVERED THE FOLLOWING:

T.R. RAVI, J.

O.P.(C). No.2718 of 2023

Dated this the 14th day of July, 2026

JUDGMENT

M/s.Union Bank of India filed a company petition for initiating Corporate Insolvency Resolution Process (CIRP) against M/s.Raihan Healthcare Private Limited (corporate debtor). The 2nd respondent is the Liquidator of the corporate debtor appointed by the NCLT in the above company petition. The company petition was filed in 2019. While the proceedings were pending, an agreement was executed on 10.05.2021 between the petitioner Municipality and the corporate debtor represented by the 2nd respondent whereby the hospital was taken over for a period of 120 days for the purpose of COVID-19 treatment during the pandemic. The petitioner was to refurnish the hospital facility and was to pay total commitment of 20% sharing on gross building revenue excluding medicine and consumables with a minimum revenue commitment of ₹3,50,000/- per month. The share of revenue collection of a day was to be deposited in the liquidation account on the same day of collection but not later than the next working day. This was pursuant to a decision which was taken by the Municipal Council on 10.05.2021. On the same day, Ext.P5 agreement was also entered into between the petitioner and the hospital management agency M/s. Irattupetta Medical Centre, who was represented by the managing partner P.S.Muhammed Basheer. The Municipality entrusted the running of the hospital to the said private firm since the Municipality did not have the necessary infrastructure to run a hospital. The venture however failed. According to the petitioner, they only acted as a facilitator considering the huge public demand. The hospital management agency failed to pay the electricity charges for the building and demands were raised by the 2nd respondent against the petitioner. The petitioner informed the 2nd respondent on 29.07.2021, that they cannot take up the liability and action will have to be taken against the agency, which was responsible for all the liabilities. The petitioner also cancelled Ext.P3 arrangement with effect from 09.09.2021 and intimated the hospital management agency and the 2nd respondent. On 14.09.2021, the 2nd respondent took possession of the Hospital. The 2nd respondent issued notice to the petitioner on 04.12.2021 claiming amounts due under the take over agreement. Thereafter, a petition was filed by the 2nd respondent before the NCLT for recovering the amount from the petitioner.

2. Even though notice was issued by the petitioner, nobody appeared before the NCLT. The petitioner was set *ex parte* on 02.03.2022. On 30.03.2022, an *ex parte* order was issued by the NCLT directing the petitioner to pay a sum of ₹19,57,637/- together with interest at 6% per annum within two weeks to the Liquidator. An application filed by the petitioner to set aside the *ex parte* proceedings was dismissed by the NCLT on 19.07.2022 as per Ext.P14 order. When there was non-compliance with the directions issued on 30.03.2022, the 2nd respondent initiated contempt proceedings against the petitioner as is seen from Ext.P17 notice directing to show cause. The petitioner has challenged Exts.P1, P14 and Ext.P17 orders dated 02.03.2022, 19.07.2022 and

17.10.2023. The petitioner has also sought a direction to the 1st respondent to reconsider IA(IBC)/25(KOB)/2022 afresh after affording an opportunity of hearing to the petitioner.

3. The 2nd respondent entered appearance and filed a counter affidavit. The 2nd respondent contended that an original petition cannot be maintained against the order of the NCLT and the remedy was elsewhere. The counter affidavit gives the details of the proceedings before the NCLT from 2019 onwards. On 15.05.2020, the NCLT had permitted the District Collector, Kottayam to take over the premises of the corporate debtor on an "as is where is basis" without any liability to the corporate debtor. Thereafter by order dated 05.11.2020, liberty was granted to utilise the hospital as a COVID-19 treatment center. The orders dated 15.05.2020 and 05.11.2020 have been produced as Exts.R2(c) and R2(d) along with the counter affidavit. The District Administration, after inspecting the premises, decided to drop their plans to take possession. According to the 2nd respondent, the petitioner misled the 2nd respondent and took possession of the premises from the

Liquidators, but thereafter handed over control of the hospital to the erstwhile management of the corporate debtor itself by entering into Ext.P5 agreement. It is stated in the counter affidavit that this action was against the express prohibition contained in paragraph 14 of the NCLT's order dated 05.11.2020, the contents of which has been extracted in paragraph 8 of the counter affidavit. It was contented that the attempt of the petitioner was to walk away from their liability under the agreement by shifting the same to the Hospital Management Committee. According to the 2nd respondent, several hospital assets went missing in the process and the details of the same have also been given in the counter affidavit. It is contended that several reminders were issued to the petitioner, but they did not choose to make the payment. It is further contented that the remedy of the petitioner against the order of the NCLT was to prefer an appeal and an original petition cannot be maintained.

4. Heard the counsel for the petitioner and the respondent.

5. The counsel for the respondent raised a question

as to the maintainability of the writ petition. Section 63 of the Insolvency and Bankruptcy Code (IBC) specifically bars the jurisdiction of the Civil Code 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 the Code. Section 231 of the Code says that no civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is empowered by or under the 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 the Code. Sections 60 and 61 of the Code read thus;

> "**60. Adjudicating Authority for corporate persons**.- (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.
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> (2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a

corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

61. Appeals and Appellate Authority.—(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:

Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

(4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order."

6. Rule 49 of the NCLT Rules deals with *ex parte* hearing and disposal. The provision reads thus;

"**49. *Ex-parte* Hearing and disposal**.- (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the

> Tribunal may adjourn the hearing or hear and decide the petition or the application *ex-parte*.
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> (2) Where a petition or an application has been heard *ex-parte* against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the *ex-parte* hearing as against him or them upon such terms as it thinks fit.
>
> Provided that where the *ex-parte* hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.''

The Rule specifically provides for an application to set aside an *ex parte* order and such a petition can be considered if the applicant satisfies the Tribunal that notice was not duly served or that he was prevented by any sufficient cause from appearing for hearing. Rule 11 gives inherent power to the Tribunal to pass such orders as may be necessary for meeting the ends of justice and to prevent abuse of the process of the Tribunal. Under Section 61 of the IBC, an order has to be challenged within 30 days with a further time of 15 days that may be granted. The contention of the counsel for the respondent is that Rule 49 cannot be applied in such cases and Section 61 will have to be applied. It is contended that when there is a specific provision for an appeal, the petitioner cannot have recourse to a petition under Article 227 of the Constitution of India.

7. In **State of U.P. & Ors. v. Raghvendra Nath Srivastava & Ors.** [**2026 SCC OnLine SC 995]**, the Hon'ble Supreme Court considered the question regarding exercise of jurisdiction under Article 227 of the Constitution of India. The relevant portions of the judgment is extracted below for reference.

> "**9.** The next question we are required to consider is whether the High Court under Article 227 could have ordered the enhancement of rent. Following are the aspects regarding exercise of this power as can be understood from a perusal of a number of judgments of this Court.
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> [See: Ouseph Mathai v. M. Abdul Khadir, (2002) 1 SCC 319; State v. Navjot Sandhu, (2003) 6 SCC 641 : 2003 SCC (Cri) 1545; Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675; Waryam Singh v. Amarnath (1954) 1 SCC 51 : AIR 1954 SC 215; L. Chandra Kumar v. Union of India, (1997) 3 SCC

261; Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi [(1995) 6 SCC 576]; Koyilerian Janaki v. Rent Controller (Munsiff) [(2000) 9 SCC 406; Shalini Shyam Shetty [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338]

(i) High Courts being the apex of the judiciary in the State, have been conferred a power of superintendence over the courts and tribunals in their jurisdiction;

(ii) Although this power has found pride of place in the Constitution and is even recognised as a part of the basic structure, its origins are found somewhere in the Government of India Act, 1915. Under the successor legislation, Government of India 1935, the scope of this power was limited to be exercised in those cases where the power of appeal or revision had not been provided for, but the power as came to be adopted by the Constitution framers removed that limitation and made it a generally exercisable power.

(iii) They are tasked with the responsibility to ensure that each Court/Tribunal functions within the confines of the power as provided by the governing statute;

(iv) The overarching principle for exercise f the power is not the correctness of a particular decision but the effect of the decision in terms of abuse of power, dereliction of duty or perpetration of grave injustice to parties;

(v) Three scenarios are often recognised as being justified exercises of this supervisory power:—

(a) where the Court or Tribunal has exercised power that it does not possess;

(b) it has failed to exercise power that it does have; and

(c) where the manner of exercise of power has amounted to transgression of jurisdiction.

(vi) Given the above limits, the power is to be exercised cautiously and sparingly and not at all as a power of appeal;

(vii) Owing to its constitutional origin, statutorily placed limitations on powers such as revision, will not affect this power;

(viii) A Court can exercise this power on its own motion, both administratively and judicially however, the same is not meant to substitute the decision of the High Court for that arrived at by the Court or Tribunal subject to its supervision;

(ix) Much like Article 226, this power is also discretionary in nature and does not confer a right upon any litigant to have it exercised by the court;

(x) With specific reference to property or rent it may be noted that the Court under this power is, in the case of the former limited to cases where there is some statutory infraction or alleged collusion with the concerned Authority. In the case of the latter, it has been held that routine exercise of this power would be unwarranted since the special statute provides for the manner of exercise of powers by a particular Authority.”

8. In view of the dictum laid down by the Hon’ble Supreme Court, this Court is not expected to function as an appellate forum over orders which are passed by a statutory authority created under a specific legislation. The power of judicial review has to be exercised sparingly, cautiously and cannot be as a routine exercise, which is unwarranted since the special statute provides for the manner of exercise of powers by a particular authority. It cannot be disputed that appellate powers are available with the NCLAT, against orders passed by the NCLT. The order

setting the petitioner *ex parte* was issued on 2.3.2022. The petitioner has no case that they were unaware of the order. On 30.3.2022, the order casting liability on the petitioner was also issued. The petitioner did not choose to take any action against the above said orders within the time specified in the statute. On 19.7.2022, the application filed by the petitioner seeking to set aside the *ex parte* proceedings, was also dismissed. The petitioner chose to remain silent. Admittedly, it was only on 7.6.2023, that Ext.P15 decision was taken by the petitioner to proceed with remedies available against Ext.P1 order. It is four months thereafter that notice was issued by the NCLT for initiating contempt proceedings. The petitioner woke up from the slumber only at that point of time. When a person chooses not to take any action against orders which are passed against them, when the statue provides for remedies, they cannot be allowed to approach this Court under Article 227 of the Constitution of India, seeking an extraordinary discretionary relief. Merely because the petitioner is a Local Self Government Institution, the law cannot be different in their case.

This Court does not find any reason to interfere with the proceedings which have been initiated against the petitioner as provided in the statute.

The original petition fails and is dismissed. However, if the petitioner chooses to avail of the statutory remedies against any of the orders which have been passed by the NCLT, the time spent before this Court in these proceedings shall be deducted for the purpose of calculating the period of limitation.

Sd/-

T.R. RAVI
JUDGE

Pn

APPENDIX OF OP(C) NO. 2718 OF 2023

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF THE ORDER DATED 30.03.2022 IN IA(IBC)/25(KOB)/2022 IN COMPANY PETITION NO. IBA/240/IB/2019(CB) OF THE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH**
Exhibit P2	**TRUE COPY OF THE ORDER DATED 02.03.2022 IN IA(IBC)/25(KOB)/2022 IN COMPANY PETITION NO. IBA/240/IB/2019(CB) OF THE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH**
Exhibit P3	**TRUE COPY OF THE HOSPITAL OPERATIONS AND MANAGEMENT AGREEMENT DATED 10.05.2021**
Exhibit P4	**TRUE COPY OF THE DECISION DATED 10.05.2021 OF THE MUNICIPAL COUNCIL IN THE URGENT MEETING**
Exhibit P5	**TRUE COPY OF THE AGREEMENT DATED 10.05.2021 EXECUTED WITH THE HOSPITAL MANAGEMENT/THIRD PARTY PRIVATE AGENCY**
Exhibit P6	**TRUE COPY OF THE LETTER DATED 29.07.2021 ISSUED BY THE MUNICIPALITY TO THE 2ND RESPONDENT**
Exhibit P7	**TRUE COPY OF THE LETTER DATED 10.09.2021 ISSUED TO THE HOSPITAL MANAGEMENT/THIRD PARTY PRIVATE AGENCY**
Exhibit P8	**TRUE COPY OF THE LETTER DATED LETTER DATED 11.09.2021 ISSUED TO THE 2ND RESPONDENT**
Exhibit P9	**TRUE COPY OF THE LETTER DATED 24.09.2021 ISSUED BY THE 2ND RESPONDENT**

Exhibit P10 **TRUE COPY OF THE LETTER DATED 28.10.2021 ISSUED BY THE MUNICIPALITY TO THE HOSPITAL MANAGEMENT/THIRD PARTY PRIVATE AGENCY**

Exhibit P11 **TRUE COPY OF THE COMMUNICATION DATED 15.12.2021 ISSUED BY THE MUNICIPALITY TO THE HOSPITAL MANAGEMENT/THIRD PARTY PRIVATE AGENCY**

Exhibit P12 **TRUE COPY OF THE INTIMATION DATED 15.12.2021 ISSUED BY THE MUNICIPALITY TO THE 2ND RESPONDENT**

Exhibit P13 **TRUE COPY OF THE LETTER DATED 17.01.2022 ISSUED BY THE HOSPITAL MANAGEMENT/THIRD PARTY PRIVATE AGENCY TO THE MUNICIPALITY**

Exhibit P14 **TRUE COPY OF THE ORDER DATED 19.07.2022 IN IA(IBC)/175(KOB)/2022 IN COMPANY PETITION NO. IBA/240/IB/2019(CB) OF THE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH**

Exhibit P15 **TRUE COPY OF THE DECISION NO.5/1 DATED 07.06.2023 OF THE MUNICIPAL COUNCIL**

Exhibit P16 **TRUE COPY OF THE CAUTION NOTICE DATED 15.10.2023 ISSUED TO THE HOSPITAL MANAGEMENT/THIRD PARTY PRIVATE AGENCY ALONG WITH THE POSTAL RECEIPT AND AD CARD**

Exhibit P17 **TRUE COPY OF THE CONTEMPT PETITION NO. 1/2023 FILED BY THE 2ND RESPONDENT BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, KOCHI BENCH ALONG WITH THE NOTICE DATED 17.10.2023**

RESPONDENT'S EXHIBITS

Exhibit R2(a) TRUE COPY OF THE CIRP ORDER DATED 20.03.2019

Exhibit R2(b) **TRUE COPY OF THE LIQUIDATION ORDER DATED 07.02.2020**

Exhibit R2(c) **TRUE COPY OF THE HON'BLE NCLT ORDER IN IBA/240/IB/2019 DATED 15.05.2020**

Exhibit R2(d) **TRUE COPY OF THE HON'BLE NCLT ORDER IN MA/151/KOB/2020 DATED 05.11.2020**

Exhibit R2(e) **TRUE COPY OF THE LEGAL NOTICE DATED 04.12.2021**

Exhibit R2(f) **TRUE COPY OF THE NCLT ORDER IN IA/25/2022 DATED 30.03.2022**