

**IN THE COURT OF I ADDITIONAL DISTRICT &
SESSIONS JUDGE AT DAVANAGERE**

**PRESENT:- SRI. J.V.VIJAYANANDA, B.Com, LL.B.
I ADDL. DISTRICT & SESSIONS JUDGE, DAVANAGERE.**

DATED THIS THE 12th DAY OF OCTOBER, 2022

Misc. No.123/2019

PETITIONER/S:- Smt. Drakshayanamma
- V/s -

RESPONDENT/S :- The Manager,
The Wind World India Limited

PARTIES TO IA-II

APPLICANT/S :- The Manager,
The Wind World India Limited

(By Sri M.D/R.S, Advocate)

- V/s -

OPPONENTS/S :- Smt. Drakshayanamma

(By Sri MNR Advocate)

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ORDER ON IA NO.II

The counsel for respondent has filed this application under Section 14 of the Insolvency and Bankruptcy code 2016 R/W Section 151 of CPC and prayed to stay further proceedings of this petition till disposal of the case in CP(IB) No.12/AHM/2018 pending before the National Company Law Tribunal Ahmadabad.

2. In the affidavit filed along with this application one M.Navin Kumar the authorized signatory to the respondent company has contended that during the pendency of this petition, the proceedings was initiated by the IDBI Bank Limited and others, against the respondent company before the National Company Law Board, Ahamadabad in -

1. CP(IB)No.12/9/NCLT/AMH/2018,
2. CP(IB)No.14/7/NCLT/AMH/2018,
3. CP(IB)No.12/9/NCLT/AMH/2018,
4. CP(IB)No.11/9/NCLT/AMH/2018,
5. CP(IB)No.13/9/NCLT/AMH/2018,
6. CP(IB)No.53/9/NCLT/AMH/2018,
7. CP(IB)No.180/9/NCLT/AMH/2017 and others.

3. The National Company Law Board, Ahmadabad Bench vide order dated 20.02.2018, declared 'moratorium' till the completion of corporate insolvency resolution process for the purpose referred to in Section 14 of the Insolvency and

Bankruptcy Code, 2016. As per para No.7, at page No.40 and 41 of the order, the NCLT has stayed the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment or decree or order in any court of law, tribunal, arbitration panel or other authority. In view of the said order, this proceedings shall not be continued. Among other grounds, the respondent prayed to allow the application.

4. On the other hand, the counsel for the petitioner has filed objection and contended that, Section 14 of the Insolvency and Bankruptcy Code (IB Code), 2016 provides that the appropriate authority may declare the 'moratorium' for prohibiting the institution of suits, continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel or other authority. The insolvency and Bankruptcy Code (IB Code), 2016 is applicable only to the matters relating to insolvency, liquidation, voluntary liquidation or bankruptcy as per Section 2 of the IB Code. Therefore, it is clear from the above said provision that the above said authority as referred in IB Code does not have any authority to declare 'moratorium' with respect to the disputes other than the matters pertaining to the insolvency, liquidation, voluntary liquidation or bankruptcy. Therefore, the above order is not applicable and not relevant for this case. The object and intention behind imposing moratorium under the insolvency and Bankruptcy Code (IB Code) 2016 is in respect of the

institution of suits or continuation or pending suits or proceedings against the corporate debtor in respect of any of the corporate debtors' debts only and not relating to any other matters. Section 5 (6) of IB Code has defined the term 'dispute'. As per said Section 'dispute' includes a suit or arbitration proceedings relating to existence of the amount of debt, the quality of goods or service or the breach of a representation or warranty. Thus, it is clear from the literal meaning of the provision that Section 14 of the IB Code, 2016 is applicable only in respect of the suits or proceedings relating to the existence of the amount of debt filed by the creditors and not others. The petitioner is neither the creditor nor having such relationship or financial transaction with the respondent. Therefore, the order passed by the NCLT, Ahmadabad Bench is not applicable to this case. The present petition is filed under Section 16(3) of the Indian Telegraph Act, 1885 seeking compensation for the damage caused by the respondent by drawing the high tension line and erection of tower over the scheduled agricultural land of the petitioner. Therefore, is no way related to insolvency, liquidation, voluntary liquidation or bankruptcy. The petitioner has not filed the suit for recovery of debt as contemplated in the IB Code. But a petition under Telegraph Act, 1885, is filed seeking compensation for the damages caused by the respondent. The petitioner being the unprivileged poor farmer, who has suffered damage by the act of respondent with respect to scheduled agricultural land. Therefore, the petitioner is having every right to get the compensation for the damage caused by the respondent. Preventing the petitioner from

getting the compensation by staying the case by any law will be against the constitutional spirit and violation of Article 21, 39(A) and 41, which provides for right to life/justice, equal justice for all and right to work. The I.B Code 2016, in no way prevents the petitioner from getting justice and it gives the privilege of 'moratorium' as provided under Section 14 of the Code only against the creditors, who have lent loan to the respondent and not upon others. The respondent in the application along with affidavit has stated that the NCLT, Ahmadabad Bench has passed an order on 20.02.2018. However, the respondent has informed the same to this court after the huge delay of 20 months from the date of the order, for the reasons best known to it and it has also not given any reasons at all for not notifying the same at the earliest. This fact clearly manifests the fact that the respondent has made this application with deliberate intention to abuse the process and proceedings and to cause delay. Among other grounds, the petitioner prayed to dismiss the application.

5. From the above facts, following points that arise for my consideration are :

1. Whether the respondent has made out a ground to stay the further proceedings of this case?
2. What Order?

6. Both counsels have submitted their respective written arguments. Perused the entire file.

7. My answers to the above points are as follows :

Point No.1 : In the Negative

Point No.2 : As per the final order
for the following :

R E A S O N S

8. **POINT NO.1 :** At the outset, this petition is presented under Section 16(3) of the Indian Telegraph Act 1885, claiming compensation amount along with interest, for the alleged damages said to have been caused by the respondent company due to drawing of high power transmission lines on the scheduled land of the petitioner, from the date of drawing of line till realization of compensation amount and such other reliefs. When this matter was listed for petitioner evidence, the respondent has filed this application and prayed to stay the further proceedings of this case till disposal of the case in C.P. (I.B.) No.12/AHM/2018.

9. The counsel for respondent in his written arguments has submitted that, during the pendency of above petition, proceedings was initiated by IDBI Bank Limited and others against respondent company before the National Company Law Tribunal, Ahmadabad Bench in :

1. CP(IB)No.12/9/NCLT/AMH/2018,
2. CP(IB)No.14/7/NCLT/AMH/2018,
3. CP(IB)No.12/9/NCLT/AMH/2018,
4. CP(IB)No.11/9/NCLT/AMH/2018,

5. CP(IB)No.13/9/NCLT/AMH/2018,
6. CP(IB)No.53/9/NCLT/AMH/2018,
7. CP(IB)No.180/9/NCLT/AMH/2017 and others.

10. The National Company Law Tribunal, Ahmadabad Bench vide order dated 20.02.2018 has declared 'moratorium' till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the Insolvency and Bankruptcy Code, 2016. As per para No.7, at page No.40 and 41 of the order, institution or continuation of pending suits or proceedings against the corporate debtor, including execution of any judgment or decree or order in any court of law, tribunal, Arbitration panel or any other authority, is stayed. Accordingly, it is prayed to allow the application.

11. On the other hand, the counsel for petitioner in the written arguments has submitted that, Section 14 of the Insolvency and Bankruptcy Code (IB Code), 2016 provides that the Appropriate Authority may declare 'moratorium' for prohibiting the institution of suits, continuation of pending suits or proceedings, against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. It is pertinent to note that the Insolvency and Bankruptcy Code (IB Code), 2016 is applicable only to the matters relating to insolvency, liquidation, voluntary liquidation or bankruptcy as per Section 2 of the IB Code. Therefore, it is clear from the above said

provision that the appropriate authority as referred to in IB Code does not have any authority to declare 'moratorium' with respect to the disputes other than the matters pertaining to the insolvency, liquidation, voluntary liquidation or bankruptcy. The above said order is not applicable and not relevant for this case. The object and intention behind imposing 'moratorium' under the Insolvency and Bankruptcy Code (IB Code), 2016 is in respect of the institution of suits or continuation of pending suits, or proceedings against the corporate debtor in respect of any of the corporate debtor's debts only and not relating to any other matters. Section 5(6) of I.B.Code has defined the term 'Dispute'. As per said section, the term "Dispute" includes a suit or arbitration proceedings relating to -

- (a) the existence of the amount of debt;
- (b) the quality of goods or service: or
- (c) the breach of a representation or warranty.

12. Therefore, it is clear from the literal meaning of the provision that the Section 14 of the IB Code, 2016 is applicable only in respect of the suits or proceedings relating to the existence of the amount of debt filed by the creditors and not others. The petitioner is neither a creditor nor having any such relationship or financial transaction with the respondent. Therefore, the order passed by the NCLT, Ahmadabad Bench is not applicable to this case. The petition filed under Section 16(3) of the Indian Telegraph Act, 1885 seeking compensation for the damages caused by the respondent by drawing the high

tension line and erection of tower over the scheduled agricultural land of the petitioner. Therefore, the proceedings pending before NCLT, Ahamadabad Bench relating to insolvency liquidation, voluntary liquidation or bankruptcy is no way related to present petition. The petitioner has not filed the 'suit' for recovery of debt as contemplated in the IB Code, but the petition is filed under the Telegraph Act, 1885, seeking compensation for the damages caused by the respondent. The petitioner being the underprivileged poor farmer, who has suffered damages by the act of respondent with respect to petitioner's only bread earning source i.e., scheduled agricultural land.

13. Further it is submitted that, preventing the petitioner from getting the compensation by staying the case by any law will be against the constitutional spirit and violation of Articles 21, 39A and 41, which provides for right to life/justice, equal justice for all and right to work. Therefore, IB Code, 2016 is in no way prevents the petitioner from getting the justice and instead it only gives the privilege of 'moratorium' as provided under Section 14 of the Code only against the creditors, who have lent loan to the respondent and not upon others. The respondent in his application along with affidavit has stated that the NCLT Ahmadabad Bench has passed an order on 20.02.2018. However, the respondent has informed the same to this Court after the huge delay of about 20 months from the date of the order for the reasons best known to it and it has also not given any reasons at all or not notified the same at the earliest. This

fact clearly manifests the fact that the respondent has made this application only with deliberate malafide intention to abuse the court proceedings and to cause delay. Accordingly, it is prayed to dismiss the application.

14. The respondent along with this application has filed copy of the order passed by the National Company Law Tribunal (NCLT) Ahmadabad Bench.

15. Now the question for consideration before the court is whether by virtue of the order passed by the National Company Law Tribunal (NCLT), Ahmadabad Bench, the further proceedings of this case is to be stayed as sought for in the application.

16. At this stage, it is relevant to reproduce para-7 of the order of NCLT, Ahamadabad Bench for proper understanding.

“This Adjudicating Authority hereby order moratorium U/s.13(1)(a) of the IB Code prohibiting the following as referred in Section 14 of the Code;

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(i) There shall not be any interruption, suspension or termination of supply of essential goods or services to the Corporate Debtor during the moratorium period.

(ii) the order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.”

17. The Hon’ble NCLT, Ahamadabad Bench in para-7 of the order has stayed the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

18. At this stage, it is also relevant to refer Section 14 of the Insolvency and Bankruptcy Code 2016. It says that,

“14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

19. In the opinion of this court, Sec.14 of the said Act provides that, an appropriate authority may declare the 'moratorium' for prohibiting the institution of suits, continuation

of pending suits or proceedings against the corporate debtor including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel or other authority. In the further opinion of this court, the Insolvency and Bankruptcy Code (IB Code), 2016 is applicable only to the matters relating to insolvency, liquidation, voluntary liquidation or bankruptcy as per Section 2 of the IB Code, but not to any other proceedings, particularly not relating to recovery of debt from the respondent company. It is needless to say that, the object and intention behind imposing 'moratorium' under the Insolvency and Bankruptcy Code (IB Code), 2016 is in respect of the institution of suits or continuation of pending suits, or proceedings against the corporate debtor in respect of any of the corporate debtor's debts only and not relating to any other matters.

20. At this stage, it is relevant to refer Sec.2 of Insolvency and Bankruptcy Code (IB Code), which reads as:

Sec.2 - The provisions of this Code shall apply to—

- (a) any company incorporated under the Companies Act, 2013 or under any previous company law;
- (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

(c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;

(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and

(e) personal guarantors to corporate debtors;

(f) partnership firms and proprietorship firms and

(g) individuals, other than persons referred to in clause (e).

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

21. From Sec.2 of the said Code it is clear that, appropriate authority as referred to in IB Code does not have any authority to declare moratorium with respect to disputes other than the matters pertaining to the insolvency, liquidation, voluntary liquidation or bankruptcy.

22. At this stage, it is also relevant to refer Sec.5(6) of IB.Code which defines regarding the term dispute. It says,

“Dispute” includes a suit or arbitration proceedings relating to -

(a) the existence of the amount of debt;

(b) the quality of goods or service: or

(c) the breach of a representation or warranty.

23. From the definition of the term dispute, it is clear that, Sec.14 of I.B.Code, 2016 is applicable only in respect of suits or proceedings relating to existence of amount of debt filed by the creditors and not others. Admittedly, the petitioner is neither a creditor nor having any relation or financial transaction with the respondent. Therefore, in the opinion of this court, prima facie, the order passed by NCLT, Ahamadabad Bench relating to the petition filed by IDBI Bank against the respondent company, which mainly related to insolvency, liquidation, voluntary liquidation or bankruptcy only, will not come in the way of this court to proceed with this petition.

24. Admittedly, the present petition is filed U/s.16(3) of Indian Telegraph Act, 1885 seeking compensation for the damages said to have caused by the respondent by drawing high tension line and erection of tower over the scheduled agricultural land of the petitioner. Therefore, in the further opinion of this court, since the litigation of the respondent company pending before NCLT and the litigation pending before this court are no way connected to each other, therefore based upon said order, the further proceedings of this petition cannot be stayed. In fact, the respondent has not produced copy of subsequent order passed by NCLT to know the stage of said petition. No doubt, NCLT, Ahamadabad Bench has passed an order staying the institution of suits or continuation of pending

suits or proceedings against the corporate debtor, but since the present petition is filed claiming compensation amount by way of damages and since the present petitioner is not a creditor to the respondent company, the order passed by the NCLT cannot be a ground to stay the further proceedings of this case. Accordingly, I am of the opinion that, the respondent has not made out any grounds to stay the further proceedings of this case. Hence, the application filed is devoid of merits and is liable to be rejected. Hence, I answer Point No.1 in the Negative.

25. **POINT No.2** : In view of my finding on point No.1, I proceed to pass the following :-

O R D E R

The I.A-II filed by the respondent U/s.14 of the Insolvency and Bankruptcy Code, 2016 R/w Sec.151 CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 12th day of October, 2022).

(J.V.VIJAYANANDA)
I ADDL. DISTRICT & SESSIONS JUDGE,
DAVANAGERE.