MHMM180078182021

Summary Cases/5800134/2021
CENTRUM BROKING LIMITED Vs. KESHAV NARAYAN KANTAMNENI

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, 58TH COURT, BANDRA, MUMBAI
ORDER BELOW APPLICATION EXH.22

1. This is an application for stay of proceeding in the light of insolvency proceeding came to be filed against the accused under section 95 of I.B.Code 2016 before Hon'ble National Company Law Tribunal, Chennai.

2. It is contended on behalf of the absconding accused that one Yes Bank Ltd. has initiated the insolvency proceeding against the accused under section 95 sub clause (1) of I.B.Code 2016. In the said matter Hon'ble National Company Law Tribunal, Chennai has appointed Interim Resolution Professional vide order dated 12.07.2024. Yet the report is to be filed before the Hon'ble National Company Law Tribunal. Section 96 sub Clause (1) states that, "When an application is filed under section 94 or section 95,

> (a) an Interim-moratorium shall commence on the date of the application in relation to all the debts and shall ceased to have effect on the date of admission and such application; and
>
> (b) during the interim-moratorium period-
>
> (i) any legal action or proceeding pending in respect of any debt shall be deemed to be have been stayed and
>
> (ii) the creditors of the debtor shall not initiated any legal action or proceeding in respect of any debt.

Hence, this application for stay of trial till further orders in the proceeding before Hon'ble National Company Law Tribunal.

3. Complainant resisted the application vide detailed reply at Exh.24 on the grounds mentioned in the reply. It is contended that the scope of nature of proceeding under the Negotiable Instrument Act, 1881 and Insolvency and Bankruptcy Code, 2016 are quite different and would not intercede with each other. The matters before NCLT are of civil nature. The proceedings which are kept in abeyance do not include criminal proceedings. Accordingly, prayed for rejecting the application.

4. Heard Ld. advocate Mr. Mahesh Ahire for the accused. Perused written notes of arguments filed on behalf of the accused. Heard Ld. advocate Mr. Carl Patel for the complainant.

5. Before touching to the legal aspect and merits of the application, I here deem fit to state some facts pertaining to the case. In the case in hand the accused is absconding. His conduct of absconding is despite assurance given before Hon'ble Lordship in Criminal Application No.591/2024 wherein Hon'ble Lordship has directed to this court to expedite hearing of the trial and to dispose of the same as far as possible within six months from the date of receipt of order that is 09.05.2024. Already proclamation warrant under section 82(1) of Code of Criminal Procedure is issued against the accused vide speaking order below Exh.25. In short, there is reason to believe that accused is protracting the litigation by hook or crook either in the guise of availing legal remedies or filing application such as present application without giving personal appearance of the accused.

6. Now coming to the legal aspect of applying the provisions of I.B.Code 2016 for staying the trial commencing under section 138 of Negotiable Instrument Act which is a Special statute. Needless to state that section 96 sub clause (1) of I.B.Code speaks for deemed stay of **any legal action or proceeding** pending in respect of **any debt** in respect

of which an application under section 94 or section 95 is filed and or an Interim Moratorium came to be awarded by the Hon'ble National Company Law Tribunal. Much stress is given on behalf of the accused on the word 'any debt' mentioned in section 96(1) to support his arguments to stay the trial. However, it will have to be born in mind that the birth of Insolvency and Bankruptcy Code, 2016 was by way of enactment considering existence of previous various laws and their provisions as to insolvency proceedings such as Company Law, Insolvency Act etc.

7. In my view any legal action or proceeding mentioned in section 96(1)(a) of I B Code means any other proceeding similar in respect of debt under various previous laws such as Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due To Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013 etc. Because the I B Code is established to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets etc.

8. The intention of legislature was quite clear for enacting new law pertaining to those various Acts include clubbing of various provisions of those laws in one new Act known as I. B. Code 2016. It is quite clear that the provisions of I. B. Code are applicable to various such insolvency proceedings of civil nature. It gives the remedy of civil nature to the aggrieved parties. The Act nowhere derogates or dilutes or take away or over ride the provisions of Special statute such as Negotiable Instrument Act, 1881. Therefore, there is reason to believe for me that the provisions of I.B.Code will not apply ipso facto to the

proceeding of criminal nature.

9. Secondly, though after plain reading wording of section 96(1) describes 'any debt', the meaning of 'any debt' will have to be taken, related to the debts in the proceeding and not all the known or unknown debts. In my view the debts worded in section 96(1) would amount to debts in between the parties which knocked the door of Hon'ble National Company Law Tribunal or the debts of subsequent creditors of the insolvent party who are seeking the civil remedy of recovery of such debts by lodging their claims. Therefore, in my view the provision under section 96(1) will not be suitable for staying present trial under section 138 of The Negotiable Instrument Act which is a criminal proceeding under a remedy of criminal nature. If the trial is stayed considering the provision under section 96(1) of I.B.Code, it will amount to suppress, over ride the provisions of a Special statute which is not contemplated or expected under any of the provisions of I.B. Code 2016.

10. The intention of legislature is quiet clear from the wording of section 101 of the Code. The same neither confers any blanket right upon the defaulter/debtor nor the constructive meaning of the section 96(1)(b)(i) contemplates taking away the statutory right conferred upon the creditors under different statutes either to initiate criminal proceedings or continue such proceedings, if already pending before granting moratorium though the debt might be same as of claimed under insolvency proceedings.

11. Ld. Advocate for the accused in support of his submission has relied upon the Judgments in the case of ***Sheetal Gupta w/o Surendra Gupta Vs. National Stock Exchange Limited and another***, of Hon'ble Bombay High Court delivered on 10.01.2023. Hon'ble Bombay High Court has held in the Judgment cited supra that the provisions of I. B.

Code would apply even to the criminal proceeding describing the meaning of sub section (2) of section 101 that is any pending legal action or proceeding in respect of any debt. The same view is taken by Hon'ble Lordship of Bombay High Court, Nagpur Bench in Criminal Application No.729/2022.

12. With due respect to the ratio laid down in both Judgments cited supra, in my humble opinion, the same would not be useful in support of contentions of the accused for staying trial considering the Judgment of Hon'ble Apex Court in the case of ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Ltd. reported in (2023) 10 Supreme Court Cases 545.*** In the case, Hon'ble Supreme court has held that, "*A bare reading of section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is in the nature of proceedings under section 138 of the Negotiable Instrument Act. It can not be said that the process under the IBC whether under section 31 or section 38 to 41 which can extinguish the debt would ipso facto apply to the extinguishment of the criminal proceedings. The court can not accept the plea that if proceeding against the company come to an end then the Managing Director can not be proceeded. Where the proceeding under section 138 of the Negotiable Instrument Act had already commenced and during the pendency the company gets dissolved, the signatories/directors can not escape from their penal liability under section 138 of Negotiable Instrument Act by citing its dissolution. What is dissolved is only the company and not the personal liability of the accused covered under section 141 of the Negotiable Instrument Act.*"

13. The question crops up for determination of this court that if the trial under section 138 of Negotiable Instrument Act is stayed

taking into consideration section 96(1) of I. B. Code, What would be the legal remedy for the aggrieved person that is complainant who is holder in due course of Negotiable Instrument having presumptive value under section 139 and 118 of the statute? What would be the fate of right of party to chose forum as well as legal remedies such as civil remedy or criminal remedy? Furthermore, keeping the trial stayed in infinity that is awaiting the final Judgment of the Hon'ble National Company Law Tribunal wherein the complainant is not party, would it be legal and expected by the law? What would be the effect of special statute when the I.B.Code or it's provision has not given any over ridding effect to another statute? Last but not least, even if any company went in liquidation, the personal legal responsibility of the then directors in charge of such company would remain intact. Otherwise, it would be a safe escape way given to the defrauders at the hands of law. The law of I B Code nowhere expects or expresses dilution of jurisdiction or implementation of statutory provisions of a special statute enacted prior to I B Code and still in force.

14. Coming to the case in hand, the same seems to be just only to protract the litigation without adhering to the directions of Hon'ble High Court. There is reason to believe that the application is moved only to protract the trial. Hence, I pass the following order.

ORDER

1. Application is rejected with costs of Rs.5,000/- to be paid to Legal Aid Fund for wasting precious time of the court under pretext of exhausting legal remedy.

2. Granted 15 days time to challenge the order and to file appeal before Hon'ble Bombay High Court.

3. Issue certified copy of the order immediately as and when applied by the parties without any delay.

4. Order be uploaded on CIS.

5. Order dictated and pronounced in open court.

Digitally signed by MAHESH PRABHAKAR SARAF
Date: 2024.09.03 15:58:44 +0530

(M. P. Saraf)
Judicial Magistrate First Class,
58th Court, Bandra, Mumbai.
J.O.Code: MH01362

Date : 02.09.2024

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word as per the original Order.

Name of Stenographer	:	Mrs. Aditi Ravikiran Dalvi
Court	:	Judicial Magistrate First Class, 58^{th} Court, Bandra, Mumbai.
Dictated in open court on	:	02.09.2024.
Transcribed and Typed on	:	02.09.2024.
Order printed and Signed on	:	02.09.2024.
Order Uploaded on	:	03.09.2024.