MHMM180113512018

Summons Cases SS/5801772/2018
SUDHA J CHAUDHARY Vs. M-S ONE WORLD IND P LTD

IN THE COURT OF THE METROPOLITAN MAGISTRATE, 58TH COURT, BANDRA, MUMBAI

ORDER BELOW APPLICATION EXH.29

1. This is an application for stay of the proceeding by operation of law in view of section 96 of I B Code, 2016.

2. It is contended on behalf of the accused No.3 that he is director of accused No.1 company till the order of moratorium passed on 16.11.2018 initiated under section 9 of I B Code before NCLT Mumbai. Interim Resolution Professional was appointed to conduct Corporate Insolvency Resolution Process of the accused company. As accused No.3 is currently under going insolvency proceeding, an Interim Moratorium has been imposed, the proceeding needs to be stayed. Hence, this application.

3. Complainant objected the application vide detailed reply Exh.30. It is contended on behalf of the complainant that matter is very old. Accused are delaying trial by remaining absent and filing frivolous applications. The provisions of I B Code is the civil remedy. The proceeding under section 138 of Negotiable Instrument will not be affected by section 96 of I B Code. There is no bar in any of the provision of I B Code and N.I. Act from approaching the criminal court to seek penal action under section 138 of N.I.Act. Accordingly, prayed for rejecting the application with heavy costs.

4. Heard both sides.

5. Needless to state that Hon'ble Apex Court in the case of ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India***

Ltd., has made law clear on the point of criminal prosecution under section 138 of Negotiable Instrument Act pending against the directors of the companies whomsoever went in liquidation or become bankrupt. In the case in hand even if, it is accepted that accused No.1 company went in liquidation and moratorium is ordered by Hon'ble National Company Law Tribunal at Chennai on 19.11.2019, that will not affect the criminal proceeding came to be filed under section 138 of Negotiable Instrument Act against the directors who were responsible for the day to day affairs and administration of the accused No.1 company under liquidation. The evidence on record speaks for the legal responsibility of accused No.3, the then directors of accused No.1.

6. Hon'ble Apex Court in the case *Ajay Goenka* has given and cleared parameter for stay of proceeding in the circumstances wherein moratorium is granted under the provisions of I B Code. The directors responsible for day to day work or Management of accused No.1 company at relevant period of transaction would be legally liable for facing criminal prosecution. Hon'ble Supreme court in the case cited supra 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."

7. It is well settled principle of law generated by the provisions of I B Code that the criminal proceeding would stands stayed only in case of companies where the Corporate Debtors have preferred the application under section 96 r/w. Section 32 of I B Code. The complainant or the accused No.3 has not initiated said proceeding before the Hon'ble NCLT nor the complainant is party to said proceeding. Furthermore the law of Negotiable Instrument being special statute, the provisions of I B Code will not prevail over the statutory provision of Negotiable Instrument Act. 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. If it is accepted taking recourse to the word employed in I B Code, "***Any legal proceeding***" as observed by the Hon'ble High Court in ***Sheetal Gupta's*** case, the same will nullify the effect of special statute. It would be as good as taking away the legal remedy given by the special statute.

8. Therefore, in view of ratio laid down by the Hon'ble Apex Court, the same will prevail over the ratio laid down in the case of ***Sheetal Gupta w/o Surendra Gupta Vs. National Stock Exchange Limited and another***, delivered by Hon'ble Bombay High Court. With due respect to the ratio laid down by the Ho'ble Bombay High Court, in the case of *Sheetal Gupta*, the same would not come to aid of the accused for prolonging the proceeding years together.

9. 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. Furthermore, the interim moratorium under section 96(1)(a) or section 101 of the Code would apply only during the interim moratorium period and not in infinity. Further, the same shall cease to have effect at the end of the period of 180 days from the date of admission of the application by the adjudicating authority.

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. So also, on perusal of entire I B Code, it is crystal clear that a civil remedy is made available by the Code which would not apply ipso facto to the criminal litigation's and mainly to the cases instituted under section 138 r/w. section 141 of Negotiable Instrument Act. The

remedy to prosecute the company and it's directors under section 141 will not be diluted by the application of section 96(1) by saying that ***any legal action or proceeding in respect of any debt*** would mean and include the criminal litigation under section 138 of Negotiable Instrument Act also or it will fall within said exception.

12. Coming to the case in hand, the matter is pending since year 2018. In the facts and circumstances moving present application knowing well the provisions of law not applicable instead of advancing final arguments in old matter is nothing but abuse of process of law. The same seems to be just only to protract the litigation.

13. There is reason to believe that the application is moved only to protract the trial. Hence, pass 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. Costs are condition precedent to exercise further right to advance arguments.
3. Matter is adjourned for compliance of order till next date with direction that no adjournment will be granted.
4. Order dictated and pronounced in open court.
5. Order be uploaded on CIS for the knowledge of parties.

Digitally signed by
MAHESH PRABHAKAR
SARAF
Date: 2024.06.13 18:26:14
+0530

Mumbai,
Dated : 13.06.2024.

(M. P. Saraf)
Metropolitan Magistrate,
58th Court, Bandra, Mumbai.
J.O.Code-MH01362

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	:	Metropolitan Magistrate, 58th Court, Bandra, Mumbai.
Dictated in open court on	:	13.06.2024.
Transcribed and Typed on	:	13.06.2024.
Order printed and Signed on	:	13.06.2024.
Order Uploaded on	:	13.06.2024.