

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
PERAMBALUR.

Present: Tmt.A.Balkis, B.L.,
Principal District Judge.

Monday, the 7th day of August, 2023

E.A.No.01/2022
in
E.P.No.86/2021
in
Arb.O.P.No.11/2018

M/s. Dhanalakshmi Srinivasan Charitable and
Educational Trust,
Rep. by its Board of Trustees cum vice Chairman,
having its registered office at
No.274C, Thuraiyur Road
Perambalur.

--- Petitioner/Judgment
debtor/respondent.

-Vs -

M/s. Consolidated Construction
Consortium Limited, rep. by its Managing Director
Mr. S.Sivaramakrishnan

--- Respondent/Decree
holder/Claimant.

This petition is coming up before me for final hearing in the presence of Thiruvalargal.R.SenthamaraiKannan, N.Arunprasad, P.Ananthajothi, R.Dhivyabarathi and C.Duraimurugan, Advocates for the petitioner and Thiruvalargal.V.Santhanam and S.Pradeep, Advocates for the respondent and upon perusing the petition and counter and after hearing both side, this Court has passed the following:

ORDER

The petition is filed Under Sec.151of C.P.C. r/w Section 372 and 373 of

Companies Act, 2013 along with its connected rules framed to stay the continuation of the execution proceedings until the disposal of I.B.A.No.483/2020 pending before National Company Law Tribunal, Chennai.

2. The brief averments of the affidavit appended to the petition are as follows:-

The case of the petitioner is that the petitioner is the Vice Chairman of M/s. Dhanalakshmi Srinivasan Charitable and Educational Trust and that the decree holder/claimant is a private limited company has already faced and the above company is under liquidation and wind up proceedings in I.B.A.No.483/2020 before the National Company Law Tribunal, Chennai and therefore, the said company is not at all in existence and a subsisting company to file, prosecute and conduct the above execution petition without prior permission of the said Tribunal wherein liquidation and wind up proceedings are pending in the shape of I.B.A.No.483/2020. Therefore the managing director Mr.S.Sivaramakrishnan has no locus standi to file, prosecute, continue, execute and enforce the above E.P proceedings before this court. Mr.K.Vasudevan namely an officer has been appointed as Resolution Professional and he has been entrusted with and to look after the control, management, administration and affairs of the above decree holder/claimant company, which is under liquidation and wind up proceedings. As the wind up and liquidation proceedings are started initiated and the same is under progress and as the official Resolute Professional having been appointed by the National Company Tribunal, all the Directors including the Managing Director of the decree holder/claimant company is totally disqualified from representing all the affairs, control, management and administration of decree holder/claimant company and as such the above E.P filed by the Managing Director Mr.S.Sivaramakrishnan has no right to file, prosecute, conduct, execute and enforce the arbitration award by filing this execution petition. All these facts are clearly stated in Para No.4 of the counter filed in

E.P.No.86/2021 by the present petitioner, who is the respondent in the main E.P and sought for the maintainability of the above execution petition as preliminary issue has to be tried by this court. As per Section 372 under Section 373 of Companies Act 2013, once the company has faced liquidation and wind up proceedings and after the presentation of a petition for winding up of the company, all suits and all other legal proceedings including execution proceedings by or against the company shall not be proceeded without the leave and permission from the National company Law Tribunal, wherein I.B.A.No.483/2020 is pending. Hence as soon as the liquidation and winding up process of a company begins, all the powers, functions and duties of the Board of Directors including the Managing Director stand suspended. Thus all the powers, functions, duties and rights of the Board of Directors of a company including the Managing Director will be shifted into the hands of National Company Law Tribunal, as soon as the company has faced liquidation and winding up proceedings even on and after the presentation of the application for liquidation or winding up proceedings before the company Law Tribunal. In the above case, the provisional liquidator namely Mr.K. Vasudevan having been appointed as Resolution Professional, the claimant/decree holder company who is respondent herein has no right to continue, prosecute, execute and enforce the above execution proceedings before this Hon'ble court without the requisite and the necessary leave/permission of the National Company Law Tribunal, Chennai wherein I.B.A.No.483/2020 is pending. Therefore the continuation of the above execution petition is in total violation and express contravention of Sections 372 and 373 of Companies Act 2013. There is no iota of paper filed on the side of the respondent/decree holder, claimant company that they have obtained the prior permission from National Law Company Tribunal for filing, prosecution and continuation of the above execution proceedings. There is no amendment application has been filed by the respondent/decree holder claimant company in order to change the short cause and long cause

title of the petitioner in the place of the Managing Director Mr.S.Sivaramakrishnan, there is no incorporation of the name of provisional/official resolute professional Mr.K.Vasudeven in the execution petition. It is pertinent to submit that the pendency of liquidation and winding up proceedings in I.B.A.No.483/2020 before National Company Law Tribunal has not at all been brought to the kind notice of this Hon'ble court in the execution proceedings, on the part of the respondent/decree holder claimant company. But the pendency of liquidation and winding up proceedings faced by the respondent/decree holder claimant company in I.B.A.No.483/2020 before National Company Law Tribunal has been stated only by the petitioner in the counter filed in the execution petition as the petitioner to his shock and surprise came to know about this vital fact from the Hon'ble High Court of Judicature at Madras in C.M.A.No.85/2022 pending before Hon'ble High Court of Judicature filed in challenge of the order passed in application No.4714/2017. More over the arbitration order passed in arbitration O.P.No.11/2018 dt.12.02.2021 passed by the Hon'ble Principal District Judge, Trichirappalli is also under challenge before the appellate court. Hence the petitioner seeking for stay of the above execution proceedings until the disposal of I.B.A.No.483/2020 pending before National Company Law Tribunal, Chennai and if this petition is not allowed, the petitioner/judgment debtor trust would be seriously prejudiced and if this application is allowed, no injury much less any serious injury would arise to the respondent /decree holder claimant. Hence this petition.

3. The brief averments made in the counter filed by the respondent is as follows:-

The petition is false, frivolous and unsustainable on facts and in law and the petitioner is not entitled to the relief as prayed for. The judgment debtor is hellbent upon protracting the proceeding and is placing reliance on incorrect

provisions of law, wrong appreciation of facts and legal position. M/s. Consolidated construction Consortium Limited is a company incorporated under the companies Act. On application made by State bank of India, one of the financial creditors, Corporate insolvency resolution proceedings (CIRP) were initiated against the corporate debtor by the adjudicating authority, NCLT Chennai on 20.04.2021 and the Adjudication Authority, NCLT Chennai has admitted the said application and imposed moratorium and passed consequential orders under Section 14 of the insolvency and bankruptcy code and appointed one Mr.Krishnasamy Vasudevan as interim resolution professional. The IRP was subsequently appointed as Resolution professional (RP) and the RP discharged his functions under the provisional of the code read with IBBI Insolvency Resolution Process for corporate persons regulations 2016 (Regulations). in as much as no resolution plans were received, the liquidation of M/s. Consolidated construction consortium limited. The adjudication authority has also passed the following consequential order U/s.33 (1) of the code:-

a) The liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including insolvency and bankruptcy (liquidation Process) regulations, 2016 as amended upto date enjoined thereupon.

The liquidator shall issue the public announcement that the corporate debtor is in liquidation. In relation to officers/employees and workers of the corporate debtor, taking into consideration section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

c) The liquidator shall investigate the financial affairs of the corporate debtor particularly, in relation to preferential transacts/under valued transactions and such other like transactions including fraudulent preferences and file suitable application before this adjudication authority.

d) The registry is directed to communicate this order to the registrar of companies, Chennai and to the insolvency and bankruptcy board of India.

e) In terms of Section 178 of the Income Tax Act, 1961, the liquidator shall give necessary intimation to the income tax department. In relation to other fiscal and regulator authorities which govern the Corporate Debtor, the liquidator shall also duly intimate about the order of liquidation.

f) The order of Moratorium passed U/s.14 of the insolvency and bankruptcy code, 2016 shall cease to have its effect and that a fresh Moratorium u/s.33(5) of the insolvency and bankruptcy code shall commence.

g) The liquidator is directed to proceed with the process of liquidation in a manner laid down in chapter II of Part II of the insolvency and bankruptcy 2016.

h) The liquidator is directed to investigate the financial affairs of the corporate debtor in terms of the provisions of Section 35(1) of IBC, 2016 read with relevant rules and regulations and also file its response for disposal of any pending company applications during the process of liquidation.

i) The liquidator shall submit a preliminary report to this tribunal within 75 days from the liquidation commencement date as per regulation 13 of the insolvency and bankruptcy regulations, 2016. Further such other or further report as are required to be filed under the relevant regulations. In addition, shall also be duly filed by him with this adjudicating authority.

j) Copy of this order be sent to the Financial creditors. Corporate Debtor and the liquidator for taking necessary steps and for extending the necessary co-operation in relation to the liquidation process of the corporate debtor, viz, company in liquidation.

k) Challenging the orders of the adjudicating authority, the promoter R.Sarabeswar has filed and appeal being CA (AT) (INS) No.139/2023 before national Company Law Appellate tribunal, Chennai (NCLAT) on 13.05.2023. NCLAT was pleased to passed an order on 17.05.2023. The material portion of the order reads as under:-

Arguments are continuing but the Court time is over. Keeping in view the

urgency involved in this matter, it is hereby ordered to be listed on the next working day (during vacation) i.e. 24th May, 2023. The question of interim order is kept open but till then the liquidator is directed not to make publications.

i) The interim order granted by NCLAT is continuing and the liquidator is running the company as a going concern.

3) The attention of the Hon'ble Court is invited to some of the provisions of the insolvency and bankruptcy code which was enacted by the parliament in 2016 and the preamble of the same reads as under;-

An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish and insolvency and bankruptcy board of India, and for matters connected therewith or incidental thereto'

4) A perusal of the code itself would reveal that it is a two stage process and the first stage is resolution and the second stage is liquidation. In the first stage, at the time of admitting and application, the adjudicating authority passes an order of moratorium in terms of Section 14 of the code which reads as under;

1) Subject to provisions of sub-sections 2 and 3 on the insolvency commencement date, the Adjudicating Authority shall be 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 securitization and reconstruction of Financial assets and enforcement of security interest Act, 2022 (54 of 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.

1) Explanation :- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the central Government, state government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

1(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;)

2 (3) The provisions of sub section 1 shall not apply to

3 (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

(b) a surety in a contract of guarantee to a corporate debtor).

4) the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process provided that where at any time during the corporate insolvency resolution process period, if the adjudicating authority approves the resolution plan under sub section (1) of sec.31 of passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order as the case may be.

1.A Cursory perusal of Section 14 of the code would reveal that the moratorium would be applicable only in respect of suits / proceedings initiated against the corporate debtor. In other words, the same is not applicable to the proceeding initiated by the corporate debtor.

2. In the Second stage, the Adjudicating Authority while passing an order of liquidation u/s 33 of the code passes consequential orders U/s.33(5) of the code. Section 33(5) of the code reads as under:

5. Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the adjudicating authority.

3. A perusal of Section 33(5) of the Code would reveal that no proceeding shall be initiated against the company in liquidation and any proceedings for the recovery of the amount due to the company in liquidation can be initiated by the liquidator after obtaining the approval of the adjudicating authority under section 33(5). The provision as contemplated u/s. 33(5) is only for actions to be taken by the liquidator after the liquidation. The liquidator is entitled to continue the earlier proceedings which were initiated by the company in liquidation.

4. The legislature in its wisdom has only imposed moratorium against the corporate debtor/company in liquidation and the same cannot be made applicable to

the proceedings initiated by the corporate debtor of the company in liquidation.

5. It is relevant to mention that a total claim of Rs.26,23, 87,31,623/- was received from various Financial Creditors which is a consortium of banks and more than Rs.25,04,62,14,165/- is due to the banks. It is imperative for the liquidator herein to run the company in liquidation as a going concern to maximize the interest of stakeholders. The stake holders are public sector banks and custodian of public funds. In these circumstances, the execution petition ought to be taken up and the question of staying the proceedings till the disposal of IBA No.483 of 2020 does not have sanction of law. As a matter of fact, IBA No.483 of 2020 has been disposed off and liquidation proceedings are going on. The award was passed by the arbitrator on 30.04.2018 and the petitioner/judgment debtor has filed application u/s.34 of the arbitration Act which was dismissed on 12.02.2021 in Arb. O.P.No.11 of 2018.

7. As per the amended Arbitration Act, the filing of application under Section 34 does not operate as automatic stay and the fact remains that no stay was granted by the Principal District Court, Trichy and the application challenging the award was dismissed after hearing on merits.

8. An appeal has now been filed under Section 37 of the Arbitration Act and the same is pending. There is no stay granted by the Madurai Bench of the Hon'ble Madras High Court and the Petitioner herein is attempting to indirectly obtain a stay when no stay was granted by the Hon'ble District Court and the Section 34 application is dismissed and there is no stay granted in the Section 37 Petition.

9. It is rather strange on the part of the Petitioner to contend that the company is undergoing winding up proceedings in IBA No.483/2020. IBA No.483/2020 was an application filed by State Bank of India seeking initiation of CIRP under Section 7 of the Code. The said application was admitted by the NCLT on 20.04.2021 and one Mr.K.Vasudevan was appointed as IRP and he was subsequently confirmed as Resolution Professional. The said Mr.Vasudevan started discharging his functions under the provisions of the Code and the IBBI (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016 ("Regulations") and in as much as no Resolution Plans were received within the timeline prescribed under the code, the adjudicating authority was pleased to liquidate the said company vide its order dated 12.05.2023 and appointed Mr.Radhakrishnan Dharmarajan, as the liquidator.

10. As mentioned in the preceding paragraphs, the matter is pending on appeal before the Hon'ble National Company Law Appellate Tribunal ("NCLAT") and the Liquidator is running the company in liquidation as a going concern. The duties of the Liquidator is set out under Section 35 of the Code.

1]. Section 35 (k) of the Code reads as under: (k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor,"

2]. Thus the Liquidator is entitled to continue the proceedings and in the interest of all the stakeholders, the execution petition has to be continued. While this being so, it is curious on the part of the Petitioner to contend that the Decree Holder/ Petitioner is not at all in existence and subsisting company to file, prosecute and conduct the execution petition without the prior permission of Hon'ble NCLT wherein liquidation winding up proceedings are pending.

3]. As mentioned above, the Insolvency and Bankruptcy Code ("Code") is a self contained Code which sets out the duties of the Liquidator. In view of the above by the operation of law the Liquidator is entitled to continue the execution proceedings.

4]. It is true that Mr.K.Vasudevan was appointed as Resolution Professional and it is incorrect to state that the company in liquidation is under winding up proceedings. While this being so, the allegations in the paragraph 1 that in view of the winding up and liquidation proceedings the Directors of the company in liquidation is totally disqualified from representing the affairs, control and management has no oasis. The fact remains that the corporate debtor is now represented by the liquidator.

5) The provisions of Sections 372 and 373 of Companies Act 2013 do not have

any bearing. The Liquidation proceedings under Insolvency and Bankruptcy Code are governed by the Code read with IBBI (Liquidation Process) Regulations, 2016. The further allegations in the said paragraph are denied and the Liquidator is entitled to continue the execution proceedings in the wake of the provisions of IBC. A Provisional Liquidator namely Mr.K.Vasudevan was appointed has no basis. The Insolvency and Bankruptcy Code provides for appointment of IRP who will be confirmed as RP and the said RP will discharge his functions under the Code. If there is no Resolution, a liquidation order will be passed by the Adjudicating Authority. In the instant case in as much as no Resolution plan was there, the Adjudicating Authority passed an order of liquidation in IA 627 of 2023. The continuation of the above execution petition is in total violation and express contravention of Sections 372 and 373 of Companies Act is denied. As mentioned above, the said sections are irrelevant and the question of obtaining prior permission from Hon'ble NCLT would arise only for initiation of fresh proceedings for recovery. The Liquidator is entitled to continue with the existing litigation and same is crystal clear from the reading of Sections 33(5) of the Code and the appointment of RP and the liquidator is by operation of law and therefore, no application for amendment is required. The allegations of the petitioner that the tendency of liquidation and winding up proceedings faced by the responded/decree holder company in [I.B.A.No. 483/2020](#) before National Company Law Tribunal has been stated only by the petitioner in the counter filed in the execution petition as the petitioner to his shock and surprise came to know about this vital fact from the Hon'ble Madurai Bench of the Madras High Court in [C.M.A.No. 85 of 2022](#) are false, baseless, untenable and specifically denied. It is submitted that no order of stay of the execution of the award has been passed by the Hon'ble High Court. Under such circumstances, the respondent is entitled to proceed with the execution petition and bring it to its logical conclusion. It is a settled principle of law that mere pendency of an appeal without an order of stay of the decree / award will not preclude the decree holder from executing the same and

therefore, the petition may be dismissed with costs.

4. Point for consideration is:-

Whether E.A.No.1/2022 has to be allowed or not?

Point:

5. This application is filed to stay the continuation of the execution proceedings until the disposal of I.B.A.No.483/2020 pending before National Company Law, Tribunal, Chennai.

6. According to the petitioner/judgment debtor, the respondent/decree holder is a private limited company and the company is under liquidation and wind up proceedings in I.B.A.No.483/2020 before the National Company Law Tribunal, Chennai and the respondent/decree holder company is not at all in existence and a subsisting company to file, prosecute and conduct the above execution petition without prior permission of National Company Law Tribunal wherein liquidation and wind up proceedings are pending in the shape of I.B.A.No.483/2020. Further according to the petitioner/judgment debtor, as per Section 372 and 373 of Companies Act, 2013 once the company has faced liquidation and wind up proceedings and after the presentation of a petition for winding up of the company, all suits and all other legal proceedings including execution proceedings by or against the company shall not be proceeded without the leave and permission from the National Company Law Tribunal, wherein I.B.A.No.483/2020 is pending. Therefore, the continuation of the above execution petition is in total violation and express contravention of Section 372 and 373 of Companies Act, 2013.

7. The respondent/decree holder is the M/S. Consolidated Construction Consortium Limited represented by its Managing Director Sivaramakrishnan. A

sum of Rs.44,97,85,854/- was due as on date of filing of the execution petition from the respondent namely M/s. Dhanalakshmi Srinivasan Charitable and Educational Trust as per the arbitration award passed by the Arbitrator. To recover the above said amount, the E.P.No.86/2021 has been filed. The said execution petition was filed on 02.08.2021. On an application made by State Bank of India, one of the financial creditors, Corporate Insolvency Resolution Proceedings (CIRP) were initiated against the Corporate Debtor by the Adjudicating Authority, National Company Law Tribunal, Chennai on 20.04.2021. One Mr.Krishnasamy Vasudevan was appointed as Interim Resolution Professional. On admitting the said application, National Company Law Tribunal imposed moratorium and passed consequential orders U/S.14 of the Insolvency and Bankruptcy Code. At the time of admitting the said application, Mr.Krishnasamy Vasudevan was appointed as Resolution Professional. The Interim Resolution Professional was subsequently appointed as Resolution Professional and he discharged his functions under the provisions of the code and was pleased an order of liquidation of M/s. Consolidated Construction Consortium Limited.

8. Now it has to be seen whether the contention raised by the petitioner/judgment debtor that the decree holder/respondent company is under liquidation and wind up proceedings and when it is so whether the decree holder/respondent is entitled to continue the execution proceedings and realize the amount as against the petitioner/judgment debtor. The petitioner/judgment debtor says the continuation of execution petition is in total violation under Section 372 and 373 of Companies Act, 2013. Under Section 372 of Companies Act, 2013 says,

“ 372- Power of Court to stay or restrain proceedings – The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order,

shall, in the case of a company registered to pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company”.

Under Section 373 of Companies Act, 2013 says,

“ 373- Suits stayed on winding up order- Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Tribunal and except on such terms as the Tribunal may impose”.

Therefore, on perusal of these two provisions shows that no suit or other legal proceedings shall be proceeded with or commenced against the company or contributory company in respect of any debt of the company. Here the execution proceedings is not filed against the M/S. Consolidated Construction Consortium Limited whereas the M/S.Consolidated Construction Consortium Limited has filed the execution petition for recovery of amount where liquidation has been started, the liquidator was appointed and it is the duty of the resolution professional to impose moratorium and collect of the money due for the purpose of liquidation, even in the present case, Mr. Krishnasamy Vasudevan who has been appointed as resolution professional by the National Company Tribunal who had been looking after the company as a going concern. Therefore sec. 372 and 373 of Companies Act is not applicable to the present case.

9. Further another ground raised by the petitioner/judgment debtor is that since I.B.A.No.483/2020 is pending, the execution proceedings has to be stayed. The documents filed by the respondent/decreed holder shows that

I.B.A.No.483/2020 has been ordered on 20.04.2021. However as against this order an appeal has been preferred in Company Appeal (AT) (CH) (Ins) No.139/2023 wherein the question of interim order is kept open but till then the Liquidator is not directed to made publication. However, the power of the Liquidator has been stopped by this appeal, by restricting the publication alone. But the IBA No.483/2020 was disposed off. Therefore, the question raised by the petitioner/judgment debtor that the Decree holder is not entitled to file, prosecute, conduct, execute and enforce the above proceedings before this Court without the leave and permission from the National Company Law Tribunal is not correct because in I.B.A.No.483/2020, the application has been admitted by the National Company Law Tribunal and Mr.Krishnasamy Vasudevan who was appointed as Interim Resolution Professional was appointed as Resolution Professional and after passing of moratorium U/S.14 of the Insolvency and Bankruptcy Code, 2016. The Resolution Professional has ordered liquidation of M/S. Consolidated Construction Consortium Limited on 12.05.2023 and the Adjudicating Authority has also passed consequential order U/S.33(1) of the Insolvency and Bankruptcy Code, 2016. After passing of liquidation order, moratorium that has been imposed U/S.14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and that a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code and consequential order was also passed U/S.33(5) of the Insolvency and Bankruptcy Code thereby the Liquidator has got the right to proceed to recover the amount due from the petitioner/Judgment debtor on behalf of the decree holder.Further the disposal of I.B.A.No.483/2020 also makes the application infructuous.

10. Further the petitioner/judgment debtor has also contended that an appeal has been preferred against the Arb.OP but no stay has been granted by the Hon'ble High Court and when there is no stay granted, nothing prevented this

court to execute an order of arbitral award. The respondent/decreed holder contended in the counter that the appointment of Resolution Professional and the Liquidator is by operation of law and therefore, no application for amendment is required. Though the parties have been substituted by operation of law and amendment is formal and to avoid technical objections, the execution petition has to be amended suitably by the respondent/decreed holder. However, the non amendment of the execution petition at this stage will not prevent the official liquidator from representing the decreed holder and the proceed with the execution petition. Therefore, the contention raised by the petitioner/judgment debtor for stay of the execution proceedings is not sustainable and the same is dismissed and the point is answered as against the petitioner/judgment debtor.

11. In the result, this petition is dismissed. No cost.

Dictated to the Executive Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this the 7th day of August, 2023.

Principal District Judge,
Permbalur.

Fair/Draft Order
E.A.No.01/2022
in
E.P.No.86/2021
in
Arb.O.P.No.11/2018
D.D: 07.08.2023.