In The Court of Metropolitan Magistrate, 5th Court, Calcutta

Present : Sumana Garain (WB 01068)

Metropolitan Magistrate, 5th Court, Calcutta

CNR No. WBCS02-103391-2018

CS 101069/2018

Order Dated: 01.04.2021

Both parties are absent by petition.

Today is fixed for passing order of the petition filed by accused/petitioner Ranjan Rishav dated 23.09.2019.

Perused the petition, the document filed by the parties and other materials on record.

The brief fact of the petition filed by the accused is that the accused is the director of the company JMD Chains Stores Limited issued a cheque of Rs.3,24,915/- in favour of the complainant for a car loan and the said cheque was dishonoured. The accused was a director with M/S Leather World India Limited which was a registered company but the said company was declared bankrupt by N.C.L.T on 18.07.2018 and an Official Liquidator was appointed on 29.01.2019. The complainant had already been informed with the above fact by the accused, the director of JMD Chains Stores Limited and on being informed the HDFC Bank has already submitted their claim for outstanding loan amount at or before appropriate forum. It is also the contention of the accused that this proceeding against him is barred under section 14 and Section 33(5) of I.B.C 2016. The bank account of the accused had been declared Non Performing Asset on 30.12.2016 and due to the reason the cheque of the complainant was returned as unpaid. The complainant presented its claim before the Official Liquidator. The complainant bank has already been repossessed the said car in question which was financed to the accused as per the loan agreement. In view of the circumstances the accused has prayed for drop of the proceeding against the accused.

During hearing Ld. Advocate for the accused has submitted that the car is already handed over to the Official Liquidator and the complainant has repossessed the same from Official Liquidator. On the other hand, Ld. Advocate for the complainant has submitted that the loan is legally enforceable against the accused as Section 14 of IBC 2016 is not applicable on him. Ld. Advocate for the complainant has referred a judgment passed by Hon'ble Supreme Court in this regard in Civil Appeal No.10355 of 2018.

I have carefully gone through the judgment of the Hon'ble Apex Court as referred by Ld. Advocate for the complainant.

The accused in its petition has mentioned that this proceeding is not tenable against him as any proceeding against him is barred under section 14 and section 33 (5) of Insolvency and Bankruptcy Code, 2016.

As per section 14(1) of IBC 2016 subject to the provision of sub-section 2 and 3, on the insolvency commencement date the Adjudicating Authority shall by order declare moratorium for prohibiting the institution of suits or

Contd(2)……….

continuation of pending suits or proceeding against corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. Section 33(5) of the IBC, 2016 goes as follows “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”.

Section 3(7) of IBC 2016, has defined “Corporate Person’ as “a Company as defined in clause 20 of Section 2 of the Companies Act, 2013, a limited liability partnership as defined in clause (n) of Sub Section (1) of Section (2) of the Limited Liability Partnership Act, 2008 or any other persons incorporated with limited liability under any law for time being enforced but shall not include any financial service provider”.

As per section 3(8) of IBC 2016 the definition of “Corporate Debtor” is a corporate person who owes a debt to any person.

So, on perusal of the above mentioned definition clauses of IBC, 2016, I find that accused/petitioner Ranjan Rishav, director of JMD Chains Store Limited does not fall within the meaning of ‘Corporate Debtor’ as defined in IBC, 2016. So I am of the opinion that the provision of section 14 or section 33(5) of IBC, 2016 are not applicable to the accused/petitioner.

Moreover, Hon’ble Supreme Court, India in Civil Appeal no.10355 of 2018 in P. Mohan Raj and Others Vs. M/S Shah Brothers Ispate Pvt. Ltd. as referred by the Ld. Advocate for the complainant, has been pleased to observe that the moratorium provision contained in section 14 of the IBC, 2016 would apply only to the Corporate Debtor, the natural person mentioned in Section 141 containing to be statutorily liable under chapter XVII of the Negotiable Instrument Act.

Considering the above discussion and the light of the observation made by Hon’ble Supreme Court in the above mentioned case, I am inclined to reject the petition of accused/petitioner dated 23.09.2019.

Hence, it is,

Ordered

that the petition dated 23.09.2019 filed by the accused/petitioner Ranjan Rishav is hereby rejected.

To …………………..for appearance

D/C by me. M.M 5th Court, Calcutta.