

Court No. - 92

Case :- APPLICATION U/S 482 No. - 7597 of 2024

Applicant :- Gurmeher Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Chandrika Patel, Gunjan Jadwani

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard learned counsel for the applicant and Sri Rajeev Kr. Singh, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the impugned order dated 12.1.2024 passed by Additional District & Sessions Judge, Court No.8/Special Judge (NDPS Act), Gorakhpur in Criminal Revision No. 107 of 2023 (*Gurmeher Singh Majithia vs. State of U.P. & others*) as well as the order dated 23.3.2023 passed by Addl. Civil Judge (J.D.), court No.8, Gorakhpur and stay the further proceeding of Complaint Case No. 6272 of 2020 (*Harish Chand Jaiswal vs. M/s Saraya Industries Ltd. & others*), u/s 138 N.I. Act, P.S. Kotwali, District Gorakhpur, pending before Addl. Civil Judge (J.D.), Court No.8, Gorakhpur.

3. Facts giving rise to the present case are that opposite party No.2 had filed an application u/s 138 N.I. Act against the applicant and his company, namely, M/s Saraya Industries Ltd. Learned trial court, after perusal of the complaint and other evidences on record, issued summon to the present applicant being the active director of the company by order dated 8.2.2021. That order was challenged by the applicant by way of Revision No. 107 of 2023 before Addl. District & Sessions Judge, Court No.8, Gorakhpur, but the said revision was also rejected by order dated 12.1.2024. Feeling aggrieved by both the orders, the applicant has filed the present application.

4. The contention of learned counsel for the applicant is that the applicant is the director of the company on whose behalf the cheque in question was issued. As the insolvency proceeding is going on against the company under Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "I.B.C."*), therefore, as per Section 14 of I.B.C. any proceeding including the proceeding u/s 138 N.I. Act cannot be executed or proceeded further against the company and the applicant, being the director, has not given any guarantee for any amount payable under cheque in question. It is also submitted that no finding was recorded that the applicant being the director has an active role in day to day business. In support of her submission learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of ***P. Mohanraj and others vs. M/s Shah Brothers Ispat***

Pvt. Ltd.; (2021) 6 SCC 258 in which the Apex Court observed that once the insolvency proceeding is pending against the company, then no proceeding including the proceeding u/s 138 N.I. Act can be executed against the company.

5. Per contra, learned A.G.A. has submitted that Section 14 of I.B.C. prohibits the execution only against the company and not against the natural person. It is further submitted that specific allegations were made against the applicant who actively played role in persuading opposite party No.2 to invest money in the company of the applicant.

6. Considering the submissions of learned counsel for the parties and on perusal of record, it is clear that the applicant, being director of the company, has played active role in day to day business of the company and also persuaded opposite party No.2 to invest money in the liquor business. So far as the Section 14 of I.B.C. is concerned, this Section prohibits any proceeding against the corporate debtor. Section 14 of the I.B.C. is quoted as under:-

"14. Moratorium.—(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 (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 debtor.

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.

(2-A) 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.

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

(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 Section 31 or 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."

7. The Apex Court in the case of **P. Mohanraj and others vs. M/s Shah Brothers (supra)** already considered this issue in detail and observed that moratorium u/s 14 of I.B.C. is applicable against the corporate debtor and not against the natural person like the applicant. The above judgement was again reiterated by the Apex Court in the case of **Narindar Garg and others vs. Kotak Mahindra Bank Ltd. and others; 2022 SCC OnLine SC 517**. Paragraph No. 102 of the **P. Mohanraj and others vs. M/s Shah Brothers (supra)** is quoted as under:-

*"102. Since the corporate debtor would be covered by the moratorium provision contained in Section 14 IBC, by which continuation of Sections 138/141 proceedings against the corporate debtor and initiation of Sections 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paras 51 and 59 in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] would then become applicable. The legal impediment contained in Section 14 IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, **the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.**"*

8. From the perusal of the above quoted judgement, it is clear that on

commencement of insolvency resolution process, the moratorium u/s 14 of I.B.C. prohibiting the proceeding u/s 138/141 N.I. Act will be applicable only against the corporate debtor and not against the natural persons like the directors of the company for their vicarious liability. Therefore, this judgement does not help the applicant.

9. From the perusal of the complaint as well as the statement of opposite party No.2, it is clear that there are clear allegations against the applicant that he was actually involved in day to day business of the company in question, therefore, he is also liable as per Section 141 of N.I. Act.

10. In view of the above, this Court does not find any good ground to quash the impugned proceeding. However, it is open for the applicant to raise all these issues during trial.

11. Accordingly, the application stands **dismissed**.

Order Date :- 9.4.2024

Vandana