

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1324 of 2022

IN THE MATTER OF:

Ashok Mahindru & Anr.

...Appellants

Versus

Vivek Parti

...Respondent

Present:

For Appellants: Mr. Pallav Saxena, Mr. Sorabh Dahiya, Mr. Mohd. Nauseen S., Mr. Diwakar Goel and Mr. Mohd. Abdul Wasshi, Advocates.

For Respondent: Mr. Lakshay Sawhney, Ms. Karishma Rajput and Mr. Kartik Mittal, Advocates.

ORDER

29.11.2022: Heard learned counsel for the Appellants as well as learned counsel for the Respondent. This appeal has been filed against the order dated 09.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court IV by which I.A. No. 4173/ND/2022 filed by the Applicants/Appellants has been rejected.

2. Proceedings were initiated under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') by order dated 05.09.2019 against the Corporate Debtor - 'Advance Home and Personal Care Ltd.'. In the proceedings under Section 9, an application was filed by the IRP under Section 19 sub-section (2) on 04.12.2019 against the Appellants who were Suspended Directors of the Corporate Debtor. Another application was filed by the Resolution Professional on 23.07.2020 being I.A. No. 3504 of 2020

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under Section 66 and 67 of the I&B Code. Proceedings under Section 95 were initiated against the Appellants as a Personal Guarantor for 'Advance Surfactants India Ltd.' by order dated 06.12.2021 and 07.12.2021. Consequently, the interim moratorium was kicked in the said proceedings. An application was filed by the Appellants in CP (IB) 1023/ND/2018, which was Section 9 application, for stay of proceeding under Section 19(2) as well as under Section 66 and 67, which has been rejected. Aggrieved by the said order this appeal has been filed.

3. Learned counsel for the Appellants submits that in view of the triggering of the interim moratorium in proceedings under Section 95 by order dated 06.12.2021 and 07.12.2021 all proceedings have to be stayed. He submits that in proceedings under Section 19(2) and Section 66 and 67 there is possibility of any order against the Appellants in terms of monetary consideration, which may be paid by the Appellants ultimately, hence, proceedings are required to be stayed in view of the interim moratorium. It is further submitted that the Adjudicating Authority has rejected the application of the Appellants' without giving any reason except observing that the application has been filed to halt all the proceedings against the Corporate Debtor.

4. Learned counsel for the Respondent refuting the submissions of learned counsel for the Appellants contends that what is contemplated by Section 96 is stay of proceedings relating to the debt due. Section 96 never contemplated

to stay the proceedings under Section 19(2) and Section 66 and 67, hence, the Adjudicating Authority has rightly rejected the application of the Appellants.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. Section 96 of the I&B Code which deals with interim moratorium provides:

“96. Interim-moratorium. — (1) *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 cease to have effect on the date of admission of 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 have been stayed; and*

(ii) *the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.”*

7. The expression used in Section 96(1)(b)(i) is “*any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed*”.

8. The term ‘debt’ has been defined in the I&B Code in Section 3(11), which is to the following effect:

“3(11). “*debt*” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”

9. When we read Section 96(1)(b) with the definition of ‘debt’ in Section 3(11), what is contemplated to be stayed is the proceeding relating to debt, which means a liability or obligation in respect of a claim which is due from any person. Interim moratorium shall be for such proceedings which relate to a liability or obligation due i.e. due on date when interim moratorium has been declared. Section 96(1)(b) cannot be read to mean that any future liability or obligation is contemplated to be stayed. Thus, stay of proceedings under Section 19(2) and Section 66-67 is not contemplated under Section 96(1)(b) and the scheme of Code in no matter provide for stay of such applications. The Adjudicating Authority did not commit any error in rejecting application of the Appellants praying for stay of proceedings under Section 19(2) and Section 66-67. Learned counsel for the Respondent has rightly placed reliance on judgment of this Tribunal in “**Rakesh Kumar Jain, RP HBN Homes Colonizers Pvt. Ltd. vs. Jagdish Singh Nain, RP of HBN Foods Ltd. and**

Ors., Company Appeal (AT) (Ins.) No. 425 of 2022”, decided on 04.08.2022 where question arose with regard to Section 14(1)(a) and application under Section 66 and 67. This Tribunal in Para 14, 15, 16, 17 and 18 laid down following:

“14. The core contention of the appellant is that the prohibition under Section 14 (1) (a) is applicable to Section 66 of IBC also. This contention cannot be accepted for the reason that these two provisions are independent, incorporated for different purposes. Section 14 of IBC is intended to prevent fictitious claims by 3rd parties to realise the amount by execution of the orders decrees etc. whereas Section 66 of IBC is intended to prevent fraudulent trading or business by corporate debtor through its corporate insolvency resolution professional or suspended directors, during insolvency resolution process or liquidation process. These two provisions have to be read independently to achieve the object of the enactment.

15. While interpreting the provisions, the statute must be construed to make it effective and workable. The Courts/ Tribunals strongly lean against a construction which reduces the statute to a futility, vide judgment of Apex Court in M. Pentiah Vs. Veeramallappa Muddala¹. A statute or any enacting provision therein must be so construed as to make it effective and operative “on the principle expressed in

the maxim: ut res magis valeat quam pereat”, vide judgment of Apex Court in CIT Vs. S. Teja Singh². On application of the principles that courts while pronouncing orders upon the constitutionality of a statute start with a presumption in favour of constitutionality and prefer a construction which keeps the statute within the competence of the Legislature, vide judgment of Apex Court in Corporation of Calcutta Vs. Liberty Cinema³.

16. *In view of the settled principle of law both the provisions referred above should be construed harmoniously to give effect to the intendment of the code and to make it workable. Even otherwise the Court must interpret the provisions harmoniously to avoid inconsistency or repugnancy. It has already been seen a statute must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act, so, as to make a consistent enactment, of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” vide Raj Krushna Vs. Binod Kanungo⁴, Sultana Begum Vs. Premchand Jain⁵, Kailash Chandra Vs. Mukundi Lal⁶. between two sections of the same Act and, “whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise” vide University of Allahabad Vs.*

*Amritchand Tripathi*⁷ Accordingly, the provisions of the Maharashtra Regional and Town Planning Act, 1966, were read together by the Supreme Court after noting the purpose of the Act. The Act was held not to envisage a situation of conflict, and therefore, the edges were required to be ironed out to read those provisions of the Act which were slightly incongruous, so that all of them are read in consonance with the object of the Act, which is to bring about orderly and planned development *vide Manohar Joshi Vs. State of Maharashtra and Ors.*⁸

17. Applying the principles laid down by the Apex court in the above judgments it is the duty of this Tribunal to construe Section 14 (1) (a) and Section 66 of IBC harmoniously to make the enactment effective and workable.

18. In the present facts of the case there is absolutely no inconsistency or repugnancy between Section 14 (1) (a) and Section 66 of IBC. Section 14 of IBC is a bar against institution and prosecution of any suits or proceedings or execution of orders and decrees in other courts or Tribunals but not a bar to pass appropriate order in the pending proceedings against the resolution professional or suspended directors and related parties, before the Adjudicating Authority, during the insolvency resolution process or liquidation process. On the other hand, Section 66 of IBC empowered the Tribunal to pass appropriate orders when the suspended directors or insolvency

professional of the Corporate Debtor carried on fraudulent trading or business during resolution process. Therefore, the Adjudicating Authority passed the impugned order only by exercising power that conferred on it by Section 66 of IBC. Hence, the contention that during moratorium, the Adjudicating authority shall not pass an order impugned in this appeal is unsustainable, without any merit. If such contention is accepted by this Tribunal, Section 66 of IBC would become otiose or redundant.”

10. Learned counsel for the Appellant has also placed reliance on judgment of Hon'ble Supreme Court in **“(2018) 17 SCC 394, State Bank of India vs. V. Ramakrishnan & Anr.”**, where the Hon'ble Supreme Court had occasion to consider Section 96 and Section 101 with Section 14 and it was observed that Section 14 cannot be possibly apply to a personal guarantor. In para 26 following has been observed:

“26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the

moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.

26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor – often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.”

11. The judgment of the Hon’ble Supreme Court in the above case does not support the submissions of the Appellants which has been raised in the facts of the present case that proceedings under Section 19(2) and Section 66-67 shall be deemed to have been stayed by virtue of interim moratorium under Section 96(1)(b).

12. We, thus, are of the view that no error has been committed by the Adjudicating Authority in rejecting application of the Appellants. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

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