



2024 INSC 54

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO(S). 4480-4481 OF 2023****ANSAL CROWN HEIGHTS FLAT BUYERS
ASSOCIATION (REGD.)****.....APPELLANT(S)****VERSUS****M/S. ANSAL CROWN INFRABUILD
PVT. LTD. & ORS.****.....RESPONDENT(S)****WITH
CIVIL APPEAL NO(S). 4247 OF 2023****JUDGMENT****ABHAY S. OKA, J.**

1. The impugned orders in these appeals are more or less identical. Therefore, we are making a reference to the factual aspects in Civil Appeal Nos. 4480-4481 of 2023. In a complaint filed by the homebuyers before the National Consumer Disputes Redressal Commission (for short 'the National Commission'), an order was made by the National Commission directing the Developer to complete the project in all respects and handover the possession of the allotted flats/apartments to the members of the Association of the homebuyers within the time specified. In the said order, a direction was issued giving an option to the homebuyers, which reads thus: -

"...(vi) If the Members of the Complainant Association are not interested to wait any more for taking possession of the allotted Apartment and they want refund of the their deposited amount, the Opposite Party Developer shall refund the entire deposited amount along with interest @9% p.a. from

the respective date of deposit till payment, within a period of six weeks from today failing which the amount shall carry interest @ 12% p.a. for the said period. The Allottees shall also be entitled for a sum of ₹ 25,000/- as costs."

2. It is this direction which was sought to be executed by the appellants by filing execution applications. The developer is a company against whom the National Commission issued the aforesaid direction. The said company is the subject-matter of the proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'the IBC'). The National Company Law Tribunal (for short 'the NCLT') has admitted the petition filed under Section 9 of the IBC against the said company. The appellants sought to execute the direction(s) of the National Commission not only against the company but also against the several individuals.

3. By the impugned orders, the National Commission held that the decree cannot be executed against the company due to the operation of the moratorium under Section 14 of the IBC. Thereafter, the National Commission observed that in view of moratorium against the company, it would not be appropriate to proceed in the same execution against the opposite party Nos. 2 to 9. Another observation was made that other opposite parties (opposite party Nos. 2 to 9 to the execution application) were not parties in the main complaint. The appellant is the applicant/deGREE holder in the execution applications.

4. The submission in brief of the appellants is that under the provisions of the IBC, there is no prohibition on proceeding against the directors/officers of the company, which is the subject-matter of moratorium under Section 14 of the IBC.

5. A reliance is placed by the appellant on the second proviso to sub-Section (1) of Section 32A of the IBC and a decision of this Court in the case of *P. Mohanraj vs. Shah Bros. Ispat (P) Ltd.*¹. Our attention is also invited to another decision of this Court in the case of *Anjali Rathi and others vs. Today Homes and Infrastructure Pvt. Ltd. And Others*². Hence, the submission is that the view taken by the National Commission is erroneous.

6. Mr. Nikhil Nayyar, the learned senior counsel appearing for the respondent Nos. 2, 4, 5, 6, 7 and 8 and Mr. Pradeep Aggarwal, the learned counsel appearing for the respondent Nos. 3 and 9 submitted that under the order which is sought to be executed, there is no liability fastened on the opposite party Nos. 2 to 9(the respondent Nos. 2 to 9). It is submitted that the National Commission has held that opposite party Nos. 2 to 9(the respondent Nos. 2 to 9) were not parties to the main complaint. Their submission is that in the case of *Anjali Rathi*(supra), this Court made a departure by permitting the appellants to proceed against the promoters of the company, which was subject to moratorium only because there was a settlement arrived at between them before this Court. He further submitted that these opponents cannot be held liable.

7. We may note here that the National Commission has not made any adjudication on the question whether the opposite party Nos. 2 to 9(the respondent Nos. 2 to 9) in the execution application were under an obligation to abide by the directions issued against the

1 (2021) 6 SCC 258

2 (2021) SCC OnLine SC 729

company. This issue has not been considered at all by the National Commission. There is no finding recorded by the National Commission that in view of any particular provision of the IBC, moratorium will apply to the directors/officers of the company.

8. In the case of *Anjali Rathi*(supra), a Bench of three Hon'ble Judges has quoted with approval paragraph '102' of its earlier judgment in the case of *P. Mohanraj*(supra). Paragraph '102' in the case of *P. Mohanraj*(supra), which reads thus:-

"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 proceedings 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."

(Underline supplied)

9. What is relevant is paragraph '18' in the case of *Anjali Rathi* (supra), which reads thus: -

"18. We thus clarify that the petitioners would not be prevented by the moratorium under Section 14 of the IBC from initiating proceedings against the promoters of the first respondent Corporate Debtor in relation to honoring the settlements reached before this Court.

However, as indicated earlier, this Court cannot issue such a direction relying on a Resolution Plan which is still pending approval before an Adjudicating Authority."

10. Thus, this Court approved the view taken in the case of *P. Mohanraj*(supra) that notwithstanding moratorium, the liability, if any, of the directors/officers will continue. This Court, therefore, permitted the appellants to expressly proceed against the promoters of the company though there was a moratorium under Section 14 of the IBC affecting the company.

11. Therefore, we are of the view that only because there is a moratorium under Section 14 of the IBC against the company, it cannot be said that no proceedings can be initiated against the opposite party Nos. 2 to 9(the respondent Nos. 2 to 9) for execution, provided that they are otherwise liable to abide by and comply with the order, which is passed against the company. The protection of the moratorium will not be available to the directors/officers of the company.

12. Therefore, we set aside the impugned judgments and orders and remit the execution application to the National Commission. The execution will continue against the opposite party Nos. 2 to 9(the respondent Nos. 2 to 9) in the execution application.

13. It is open for the opposite party Nos. 2 to 9(the respondent Nos. 2 to 9) to raise a contention that they are not bound to implement the order sought to be executed. They are entitled to file additional objections along with documents raising the issue of executability as against them.

14. We clarify that the issue whether opposite party Nos. 2 to 9 (the respondent Nos. 2 to 9) to the execution are otherwise liable, will have to be decided by the National Commission in accordance with law.

15. The appeals are partly allowed on the above terms.

16. Pending application(s), if any, shall stand disposed of.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
JANUARY 17, 2024.