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W.P.No.21277 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2022

DELIVERED ON : 01.09.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.21277 of 2022

V.R.Swetha Naidu

.. Petitioner

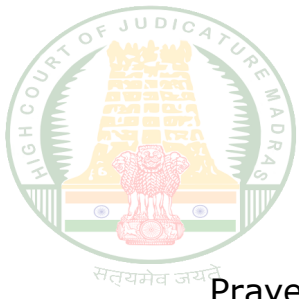
Vs

1.The Secretary to Government,
Ministry of Corporate Affairs,
Government of India,
Shastri Bhavan,
New Delhi-110 001.

2.The Regional Director,
Ministry of Corporate Affairs,
Government of India,
26, Shastri Bhavan, Block 6B,
Haddows Road, Nungambakkam,
Chennai - 600 034.

3.Insolvency and Bankruptcy Board of India,
rep. by its Chairperson,
2nd Floor, Jeevan Vihar Building,
Parliament Street,
New Delhi-110 001.

.. Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of declaration declaring and holding that the moratorium under Section 14(1)(a), 14(1)(b) & 14(4) of IBC is applicable and confined only in respect of money claims and/or money decree(s) which are made against the Corporate Debtor and not in respect of non-monetary obligations against Corporate Debtor or judgments, orders or decrees such as decree for specific performance issued/awarded against Corporate Debtor before admission of CIRP and also consequentially direct NCLT to strictly follow Section 12 as per guidelines laid in the case of "Committee of Creditors of Essar Steel v. Satish Kumar Gupta, (2020) 8 SCC 531."

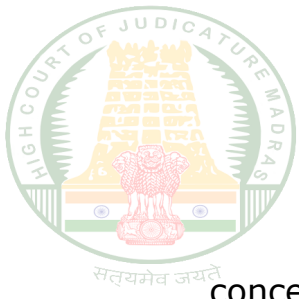
For the Petitioner : Mr.Adinarayana Rao

For the Respondents : Mr.R.K.Gandhi
Standing Counsel
for respondent Nos.1 and 2

ORDER

THE CHIEF JUSTICE

The writ petition, in the nature of public interest litigation, has been filed by a student pursuing Final Year of Master of Law in International Law and Organizations from the School of Excellence in Law, Tamil Nadu Dr.Ambedkar Law University. She has shown



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concern in reference to application of certain provisions of the Insolvency and Bankruptcy Code, 2016 [for brevity, “*the Code of 2016*”], more specifically Sections 12 and 14 of the Code of 2016. The petitioner has given reference to many other provisions to submit not only about the period of moratorium under Section 14 of the Code of 2016, but even the implication of the aforesaid provision in regard to the claims other than on the debt.

2. Learned counsel for the petitioner would submit that though Section 12 of the Code of 2016 stipulates time-lines for completion of the insolvency resolution process by the Adjudicatory Authority, it is not being strictly adhered to and the same is also hit by the judgment of the Apex Court in the case of *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and others, (2020) 8 SCC 531*.

3. It is submitted that the Corporate Insolvency Resolution Process (CIRP) should be under the strict vigil of the Adjudicatory



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Authority/NCLT and the delay in completion of CIRP should be proceeded with strict direction under Section 33 of the Code of 2016 by the Adjudicatory Authority or the appellate forum suo motu. After expiry of 330 days as stipulated under Section 12 of the Code of 2016, both the Interim Resolution Professional/Resolution Professional (IRP/RP) and the Committee of Creditors (CoC) become functus officio and, in such a situation, the Adjudicatory Authority or the appellate forum shall take action under Section 33 of the Code of 2016 sending the corporate debtor in liquidation, which is strictly not followed. It is added that forums under the Code of 2016 often embark upon deciding the issues which are not within their jurisdiction or enter into disputed questions of fact, which is not available in the summary adjudication.

4. Referring to the object of bringing the Code of 2016, it is submitted that during the period of adjudication, the application of the period of moratorium is to save the corporate debtor from the consequence if it affects its running business during the period of

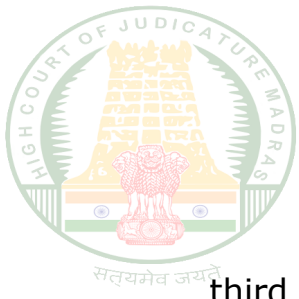


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moratorium, as the period aforesaid is allowed to give breathing time to the corporate debtor to revive its business. However, the aforesaid period is generally ignored going against the very object of the Code of 2016. The delay in completion of the proceedings otherwise goes against the object sought to be achieved for bringing the Code of 2016.

5. Citing Section 12 of the Code of 2016 regarding time limit for completion of the insolvency resolution process, it is submitted that when the word used in the provision is "shall", it is to be followed mandatorily. The initial period of 180 days, if at all is extended to continue the process, it cannot be for a period more than 90 days, with further rider that extension would not be given more than once. The second proviso to Section 12 of the Code of 2016 refers to the mandatory completion of corporate insolvency resolution process within a period of 330 days from the insolvency commencement date, including any extension of period of corporate insolvency resolution process granted under the said provision. The

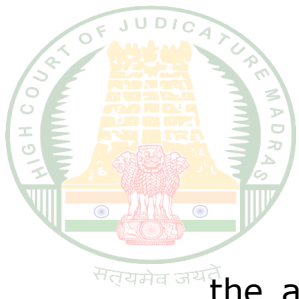


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third proviso, however, gives relaxation to the period given under the second proviso by a period of 90 days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019. Any violation of the time-lines stipulated is against the basic principles of the Code of 2016 and is detrimental to the interest of the corporate debtor.

6. The other issue taken up by the petitioner is in reference to Section 14 of the Code of 2016 to show that it is to basically apply in terms of monetary liability either in the shape of debt or any claim and not to those proceedings where both the parties may gain out of the agreement/contract. Ignoring the object of Section 14 of the Code of 2016, moratorium prohibition is applied even to the contract or performance of the rights, where both the parties may gain and, accordingly, the interpretation of Section 14 of the Code of 2016 has been sought referring to the definitions of the terms "claim", "default", "debt" and "creditor" given under Section 3 of the Code of 2016. The reference of those definitions is to strengthen



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the argument in reference to the application of Section 14 of the Code of 2016 other than to those matters which would not fall within the definition of the words referred to above.

7. The prayer is, accordingly, to consider the issue in the public interest so that the object and purpose of the Code of 2016 is served and at the same time Sections 12 and 14 of the Code of 2016 are given effect to for the purpose sought to be achieved therein.

8. To address the issues raised by the petitioner, it would be relevant to refer to the definitions of term "creditor" given under Section 3(10) of the Code of 2016, apart from the definitions of the terms "claim", "debt", "default" given under Sections 3(6), 3(11) and 3(12) of the Code of 2016, respectively.

"3. Definitions.-

...

(6) "claim" means— (a) a right to payment, whether or not such right is reduced to judgment, fixed,



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disputed, undisputed, legal, equitable, secured or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;

(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;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be."

9. Since arguments have been made in reference to Sections



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12 and 14 of the Code of 2016, apart from Sections 17 and 30 of the Code of 2016, those provisions are quoted hereunder for ready reference:

"12. Time-limit for completion of insolvency resolution process.-

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:



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Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.

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:--



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- (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



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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.

(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;



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(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."

17. Management of affairs of corporate debtor by interim resolution professional.-

(1) *From the date of appointment of the interim resolution professional,—*

- (a) *the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*



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(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

(2) The interim resolution professional vested with the management of the corporate debtor shall—

(a) act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;



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(b) take such actions, in the manner and subject to such restrictions, as may be specified by the Board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of account, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified; and.

(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

30. Submission of resolution plan.-

(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--



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(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53;
or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.



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Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor--

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;



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(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

Explanation.-- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law;

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor



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and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017(Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.



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Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

10. The provisions aforesaid have been quoted to emphasize that the Interim Resolution Professional vested with the management of the affairs of the corporate debtor shall be



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responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

11. Learned counsel for the petitioner has given illustration of a proceeding or a decree of the court in reference to non-monetary obligations and more specifically in those cases where the corporate debtor would be the gainer, apart from the third party. The specific illustration in reference to a decree for specific performance has been given, where the third party is benefited with the execution of the decree and the corporate debtor by receiving the money to their benefit. It is submitted that though such non-monetary obligation entered by the corporate debtor remains out of the purview of Section 14, rather the Code of 2016, many times, Section 14 of the Code of 2016 is applied even in reference to non-monetary transactions without taking note of the object of bringing the Code of 2016 and other provisions, which reflects basically the monetary obligations.

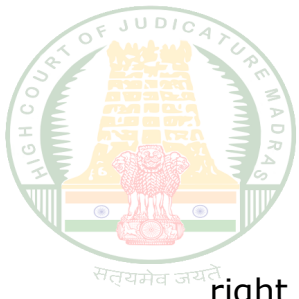


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12. We find that Section 12 of the Code of 2016 provides the time limit for completion of the insolvency resolution process. However, it is with a liberty to extend the period, which cannot be granted more than once and if the total period given therein is considered in reference to the Second Proviso, it cannot go beyond 330 days from the insolvency commencement date. A further exception is given under Third Proviso, but it is only in reference to the proceedings which were operating at the time of the amendment by the Insolvency and Bankruptcy Code (Amendment) Act, 2019. The judgment in the case of *Essar Steel India Limited*, supra, would govern the issue in reference to section 12 of the Act.

13. The further issue is in reference to Section 14 of the Code of 2016 which imposes prohibition on certain proceedings like the institution of suit or continuation of the pending suit or proceedings against the corporate debtor, including execution of any judgment or decree or order of any court or tribunal, arbitration panel or other authority. It also prohibits transfer of any of the asset or a legal



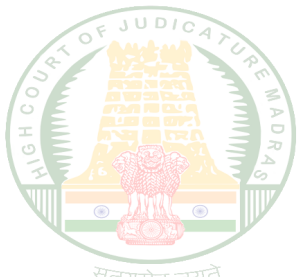
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right or beneficial interest gained by the corporate debtor.

14. According to learned counsel for the petitioner, the proceedings referred under Section 14 of the Code of 2016 is in regard to the monetary obligation of the corporate debtor and it does not impose prohibition on proceedings in regard to non-monetary obligations. A reference of Section 17 of the Code of 2016 makes it clear that the interim resolution professional vested with the management of the corporate debtor shall be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor and would not come within the sweep of Section 14 of the Code of 2016. It is giving specific reference to proceeding and decree of the specific performance, where both the parties would gain and, therefore, moratorium under Section 14 of the Code of 2016 should not affect such proceedings.

15. To address the aforesaid, we may refer to the judgment of



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the Apex Court in the case of **P.Mohanraj and others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258**. Paragraphs

(29) to (37) of the said judgment are quoted hereunder:

29. This then brings us to the object sought to be achieved by Section 14 IBC. The Report of the Insolvency Law Committee of February 2020 throws some light on Section 14 thereof read as follows:

"8.2. The moratorium under Section 14 is intended to keep 'the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the Company may continue as a going concern while the creditors take a view on resolution of default'. Keeping the corporate debtor running as a going concern during the CIRP helps in achieving resolution as a going concern as well, which is likely to maximise value for all stakeholders. In other jurisdictions too, a moratorium may be put in place on the advent of formal insolvency proceedings, including liquidation and reorganisation proceedings. The UNCITRAL Guide notes that a moratorium is critical during



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reorganisation proceedings since it 'facilitates the continued operation of the business and allows the debtor a breathing space to organise its affairs, time for preparation and approval of a reorganisation plan and for other steps such as shedding unprofitable activities and onerous contracts, where appropriate.'

8.11. Further, the purpose of the moratorium is to keep the assets of the debtor together for successful insolvency resolution, and it does not bar all actions, especially where countervailing public policy concerns are involved. For instance, criminal proceedings are not considered to be barred by the moratorium, since they do not constitute "money claims or recovery" proceedings. In this regard, the Committee also noted that in some jurisdictions, laws allow 'regulatory claims, such as those which are not designed to collect money for the estate but to protect vital and urgent public interests, restraining activities causing environmental damage or activities that are detrimental to public health and safety' to be continued during the moratorium period. "



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30. *It can be seen that Para 8.11 refers to the very judgment under appeal before us, and cannot therefore be said to throw any light on the correct position in law which has only to be finally settled by this Court. However, Para 8.2 is important in that the object of a moratorium provision such as Section 14 is to see that there is no depletion of a corporate debtor's assets during the insolvency resolution process so that it can be kept running as a going concern during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the corporate debtor. Also, the judgment of this Court in Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17 states the raison d'être for Section 14 in para 28 as follows : (SCC p. 55)*

"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own



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management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protect the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

31. *It can thus be seen that regard being had to the*



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object sought to be achieved by the IBC in imposing this moratorium, a quasi-criminal proceeding which would result in the assets of the corporate debtor being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the corporate insolvency resolution process in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a Section 138 proceeding, insofar as the corporate debtor is concerned, on its getting the necessary breathing space to get back on its feet during the corporate insolvency resolution process. Given this fact, it is difficult to accept that noscitur a sociis or ejusdem generis should be used to cut down the width of the expression "proceedings" so as to make such proceedings analogous to civil suits.

32. Viewed from another point of view, clause (b) of Section 14(1) also makes it clear that during the moratorium period, any transfer, encumbrance, alienation, or disposal by the corporate debtor of any of its assets or any legal right or beneficial



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interest therein being also interdicted, yet a liability in the form of compensation payable under Section 138 would somehow escape the dragnet of Section 14(1). While Section 14(1)(a) refers to monetary liabilities of the corporate debtor, Section 14(1)(b) refers to the corporate debtor's assets, and together, these two clauses form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences, given the object of Section 14, and cannot, by any process of interpretation, be allowed to occur.

33. Even otherwise, when some of the other provisions as to moratorium are seen in the context of individuals and firms, the provisions of Section 14 become even clearer. Thus, in Part III of the IBC, which deals with insolvency resolution and bankruptcy for individuals and partnership firms, Section 81, which occurs in Chapter II thereof, entitled "Fresh Start Process", an interim moratorium is imposed thus:

*"81. Application for fresh start order.—(1)
When an application is filed under Section 80
by a debtor, an interim-moratorium shall*



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commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application, as the case may be.

(2) During the interim-moratorium period—

(i) any legal action or legal proceeding pending in respect of any of his debts shall be deemed to have been stayed; and

(ii) no creditor shall initiate any legal action or proceedings in respect of such debt.

(3) The application under Section 80 shall be in such form and manner and accompanied by such fee, as may be prescribed.

(4) The application under sub-section (3) shall contain the following information supported by an affidavit, namely—

(a) a list of all debts owed by the debtor as on the date of the said application along with details relating to the amount of each debt, interest payable thereon and the names of the creditors to whom each debt is owed;

(b) the interest payable on the debts and the rate thereof stipulated in the contract;

(c) a list of security held in respect of any of the debts;



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- (d) the financial information of the debtor and his immediate family up to two years prior to the date of the application;*
- (e) the particulars of the debtor's personal details, as may be prescribed;*
- (f) the reasons for making the application;*
- (g) the particulars of any legal proceedings which, to the debtor's knowledge has been commenced against him;*
- (h) the confirmation that no previous fresh start order under this Chapter has been made in respect of the qualifying debts of the debtor in the preceding twelve months of the date of the application."*

34. Similarly, in Section 85, which also occurs in Chapter II in Part III of the IBC, a moratorium is imposed thus:

"85. Effect of admission of application.—(1) On the date of admission of the application, the moratorium period shall commence in respect of all the debts.

(2) During the moratorium period—

- (a) any pending legal action or legal proceeding in respect of any debt shall be deemed to have been stayed; and*



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(b) subject to the provisions of Section 86, the creditors shall not initiate any legal action or proceedings in respect of any debt.

(3) During the moratorium period, the debtor shall—

(a) not act as a Director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company;

(b) not dispose of or alienate any of his assets;

(c) inform his business partners that he is undergoing a fresh start process;

(d) be required to inform prior to entering into any financial or commercial transaction of such value as may be notified by the Central Government, either individually or jointly, that he is undergoing a fresh start process;

(e) disclose the name under which he enters into business transactions, if it is different from the name in the application admitted under Section 84;

(f) not travel outside India except with the permission of the adjudicating authority.

(4) The moratorium ceases to have effect at the end of the period of one hundred and



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eighty days beginning with the date of admission unless the order admitting the application is revoked under sub-section (2) of Section 91.”

35. When the language of Section 14 and Section 85 are contrasted, it becomes clear that though the language of Section 85 is only in respect of debts, the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision contained in Section 14(3)(a) which is that “transactions” are the subject-matter of Section 14(1). “Transaction” is, as we have seen, a much wider expression than “debt”, and subsumes it. Also, the expression “proceedings” used by the legislature in Section 14(1)(a) is not trammelled by the word “legal” as a prefix that is contained in the moratorium provisions qua individuals and firms. Likewise, the provisions of Section 96 and Section 101 are moratorium provisions in Chapter III of Part III dealing with the insolvency resolution process of individuals and firms, the same expression, namely, “debts” is used as is used in Section 85.

35.1. Sections 96 and 101 read as follows:



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"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.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

101. Moratorium.—(1) When the application is admitted under Section 100, a moratorium



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shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the adjudicating authority passes an order on the repayment plan under Section 114, whichever is earlier.

(2) During the moratorium period—

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(4) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”



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35.2. A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding. This is for the reason that a Section 138 proceeding would be a legal proceeding "in respect of" a debt. "In respect of" is a phrase which is wide and includes anything done directly or indirectly — see *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, (2018) 2 SCC 674 (at p. 709) and *Giriraj Garg v. Coal India Ltd.*, (2019) 5 SCC 192 (at pp. 202-203). This, coupled with the fact that the section is not limited to "recovery" of any debt, would indicate that any legal proceeding even indirectly relatable to recovery of any debt would be covered.

35.3. When the language of these sections is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96 and 101. Also, Section 14(1)(d) is conspicuous by its absence in any of these sections. Thus, where individuals or firms are concerned, the recovery of any property by an



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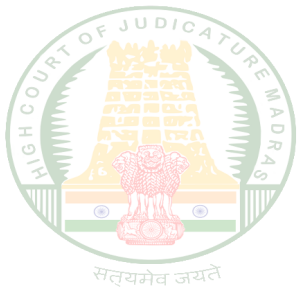
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owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor.

36. For all these reasons, therefore, given the object and context of Section 14, the expression "proceedings" cannot be cut down by any rule of construction and must be given a fair meaning consonant with the object and context. It is conceded before us that criminal proceedings which are not directly related to transactions evidencing debt or liability of the corporate debtor would be outside the scope of this expression.

37. SBI v. V. Ramakrishnan, (2018) 17 SCC 394 looked at and contrasted Section 14 with Sections 96 and 101 from the point of view of a guarantor to a debt, and in this context, held : (SCC pp. 411-12, para 26)

"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



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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 co-extensive 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



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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.”

These observations, when viewed in context, are correct. However, this case is distinguishable in that the difference between these provisions and Section 14 was not examined qua moratorium provisions as a whole in relation to corporate debtors vis-à-vis individuals/firms.

16. The issue therein was in reference to the proceedings under Section 138 of the Negotiable Instruments Act, 1881, which was alleged to be outside the scope of Section 14 of the Code of 2016. The argument was not accepted by the Apex Court despite the proceeding not being exactly of civil nature, but having impact on the corporate debtor for a monetary obligation and it was held that such proceedings would come under the prohibition of Section 14 of the Code of 2016. To draw the conclusion aforesaid, the Apex Court has given reference to a Report of the Insolvency Law



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Committee of February, 2020 and has been quoted in the paragraphs referred to above.

17. The primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting it from its own management and from a corporate death by liquidation. The time-lines given therein have also been referred by the Apex Court as a measure to protect all its creditors and workers by seeing that the resolution process goes through as fast as possible. The reference of Section 85 of the Code of 2016 in Chapter II in Part III of the Code of 2016, has also been given to show the effect of admission of application, i.e., on the date of admission of the application, the moratorium period shall commence in respect of all the debts. The provision aforesaid does not refer to any other proceeding than in reference to the debts.

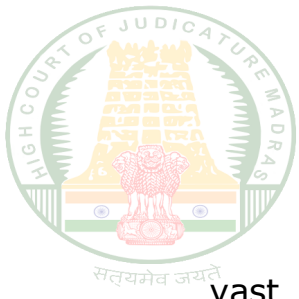
18. The Apex Court had taken the language of Sections 14 and 85 of the Code of 2016 to be in contrast, as the language of Section



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85 is only in reference to the debts, the moratorium contained in Section 14 is not subject specific. However, in paragraph 35.3 of the judgment, the interpretation of the provisions has been given holding that the width of Section 14 of the Code of 2016 is greater, as the said provision declares a moratorium prohibition in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as contained in Sections 81, 85, 96 and 101 of the Code of 2016. It is also with a finding that Section 14(1)(d) is conspicuous by its absence in any of these sections. However, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm, can be made during the moratorium period unlike the property of the corporate debtor. It is also with the finding that Section 14 of the Code of 2016 cannot possibly apply to a personal guarantor and referring to the judgment in the case of *SBI v. V. Ramakrishnan, (2018) 17 SCC 394*, it was held that Section 14 of the Code of 2016 refers only to debts due to corporate debtors, who are limited liability companies, and that in



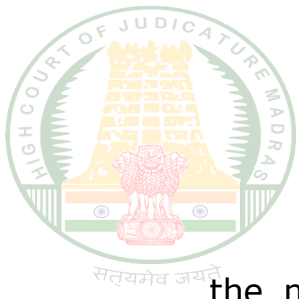
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vast majority of the cases, personal guarantees are given by the directors who are in the management of the companies. The object of the Code of 2016 is not to allow such guarantors to escape from the independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 of the Code of 2016 is not applied to them.

19. The Apex Court relied on the report of the Insolvency Law Committee to delve into the issue to hold that proceedings under Section 138 of the Negotiable Instruments Act would fall within the prohibition given under Section 14 of the Code because it becomes a monetary obligation on the corporate debtor.

20. We, however, do not find that Section 14 of the Code of 2016 is meant to refer those proceedings where even the corporate debtor would be a gainer, apart from third party, because third party would not fall under the definition of "creditor". The bankruptcy proceedings remains generally to secure the institution by applying



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the measures given under the Code of 2016 and it is mainly in reference to the debt liability of the company and not to apply during the period of moratorium. It does not exclude application of other provisions to be given effect to and as the petitioner illustrated, in regard to the exclusion of the decree for specific performance where even a corporate debtor would be receiving the monies. Therefore, we do not find that any other interpretation is possible than given by us. In effect, a third party does not fall in the definition of "creditor" and would be treated differently for subsisting contractual obligation to make the payment to the corporate debtor, which may be pursuant to a decree for specific performance, as a party therein does not fall within the definition of "creditor" and thereby it will not come within the sweep of Section 14 of the Code. The view aforesaid is fortified by the judgment in the case of **P.Mohanraj and others**, supra, wherein it was held that a decree, where the corporate debtor stands to gain money by executing the decree, cannot be said to be a pecuniary attack on it, rather it suits the corporate debtor.



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21. In the light of the aforesaid, we cannot accept any other interpretation of the provisions as prayed for by learned counsel for the petitioner other than what has been given by us.

22. The issue that now remains is about the maintainability of the public interest litigation. The writ petition has been filed showing it to be in public interest, but other than to refer to the work of research by the petitioner, who is pursuing her studies in Post Graduation, no other reason has been given to indicate the public interest. The purpose of public interest litigation is quite different than as construed by the petitioner. We, therefore, do not find the writ petition to be maintainable as a public interest litigation, but appreciating the work undertaken by the petitioner to seek interpretation of the provisions, this court has summarized the issue and made clarification of the issue by giving interpretation of the provisions therein.



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Resultantly, the writ petition is disposed of with the aforesaid finding. There will be no order as to costs.

(M.N.B., CJ.) (N.M., J.)
01.09.2022

Index : Yes
sasi

To:

- 1.The Secretary to Government,
Ministry of Corporate Affairs,
Government of India,
Shastri Bhavan,
New Delhi-110 001.
- 2.The Regional Director,
Ministry of Corporate Affairs,
Government of India,
26, Shastri Bhavan, Block 6B,
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Chennai - 600 034.
- 3.The Chairperson,
Insolvency and Bankruptcy Board of India,
2nd Floor, Jeeven Vihar Building,
Parliament Street,
New Delhi-110 001.



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THE HON'BLE CHIEF JUSTICE
AND
N.MALA, J.

(sasi)

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