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ANJALI RATHI AND OTHERS

v.

TODAY HOMES & INFRASTRUCTURE PVT. LTD.
AND OTHERS

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(SLP (C) No. 12150 of 2019)

SEPTEMBER 8, 2021

**[DR DHANANJAYA Y CHANDRACHUD, VIKRAM NATH
AND HIMA KOHLI, JJ.]**

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Insolvency and Bankruptcy Code, 2016: s.14 – Petitioners are home buyers in a group housing project – Possession of apartments were not handed as per the agreement – Petitioners filed consumer complaint before National Commission (NCDRC) – NCDRC directed refund of money with interest – Execution proceedings – First respondent challenged the order of NCDRC

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before High Court and stay was granted in favour of first respondent – Pending execution, proceedings were initiated against the first respondent before NCLT by operational creditor – Adjudicating Authority admitted s.9 petition following which the corporate insolvency resolution process was initiated and a moratorium was

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declared under s.14 of the IBC – This order of NCLT resulted in filing of special leave petition by certain other homebuyers with grievance that application filed for initiation of corporate insolvency against the first respondent was merely to stall the refund of the amount due to the homebuyers in terms of order of NCDRC – Petitioners lodged their claims before the Resolution Professional

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– CoC approved the Resolution Plan which was submitted by the consortium of homebuyers – Application was filed by the Resolution Professional for approval of the Resolution Plan before the Adjudicatory Authority and some objections were received – The proceedings are now pending before the Adjudicating Authority, awaiting its approval under s.31(1) of the IBC – If the petitioners

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have any objections to the Resolution Plan, they are to submit them before the Adjudicating Authority – NCLT is directed to ensure that the application for approval is disposed of expeditiously – Since the Resolution Plan is still to be approved by the Adjudicating Authority under the provisions of s.31(1) of the IBC, at this stage, it

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is held not appropriate to issue a direction to attach personal

properties of the promoters – After the Resolution Plan is approved under the provisions of s.31(1), consequences emanating from the statutory provision would ensue to the benefit of the home buyers – Further, since the moratorium declared in respect of the first respondent continues to operate under s.14 of the IBC, no new proceedings can be undertaken or pending ones continued against the Corporate Debtor – Petitioners would not be prevented by the moratorium under s.14 of the IBC from initiating proceedings against the promoters of the first respondent in relation to honoring the settlements reached before this Court – However, this Court cannot issue such a direction relying on a Resolution Plan which is still pending for approval before an Adjudicating Authority.

Disposing of the special leave petitions and appeal, the Court

HELD: 1. The conspectus of facts before this Court reveals that the petitioners have participated in the proceedings before the RP and later, the CoC. The Resolution Plan which has been submitted by the consortium of home buyers stands approved by the CoC and the proceedings are now pending before the Adjudicating Authority, awaiting its approval under Section 31(1) of the IBC. If the petitioners have any objections to the Resolution Plan, they are to submit them before the Adjudicating Authority. The NCLT is directed to ensure that the application for approval is disposed of expeditiously and preferably within a period of six weeks from the date of receipt of a certified copy of this order.[Para 12][159-G-H; 160-A]

2. The petitioners urged that this Court should at the present stage direct that the personal properties of the promoters be attached in view of the provisions contained in the Resolution Plan which have been extracted earlier. The Resolution Plan is still to be approved by the Adjudicating Authority under the provisions of Section 31(1) of the IBC. Hence, at this stage, when the Resolution Plan awaits approval, it would not be appropriate for this Court to issue a direction of that nature. After the Resolution Plan is approved under the provisions of Section 31(1), consequences emanating from the statutory provision would ensue to the benefit of the home buyers. Further, since the

A moratorium declared in respect of the first respondent Corporate Debtor continues to operate under Section 14 of the IBC, no new proceedings can be undertaken or pending ones continued against the Corporate Debtor.[Paras 13, 14][160-A-D]

B *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.* (2021) 6 SCC 258 – relied on.

C 3. 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, this Court cannot issue such a direction relying on a Resolution Plan which is still pending for approval before an Adjudicating Authority. [Para 15][162-B-C]

Case Law Reference

D (2021) 6 SCC 258 relied on Para 15

EXTRAORDINARY/APPELLATE JURISDICTION: SLP (C) No.12150 of 2019.

E From the Judgment and Order dated 27.03.2019 of the High Court of Delhi at New Delhi in CM(M) No.494 of 2019.

With

F Civil Appeal Nos.5231-5238 of 2019 and SLP (C) Diary No.45043 of 2019.

Pawanshree Agrawal, Adv. for the Petitioners.

G Himanshu Satija, E. C. Agrawala, Manoj Yadav, Sushil Kaushik, Ranbir Singh Yadav, Mrs. Shally Bhasin, Ayush Sharma, Aditya Parolia, Piyush Singh, Nithin Chandran, Akshay Srivastava, Ms. Aditi Sinha, Rajesh Kumar, Gaurav Goel, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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DR DHANANJAYA Y CHANDRACHUD, J.

1. The petitioners are home buyers in a group housing project, Canary Greens in Sector 73, Gurgaon, being developed by the first respondent. Home buyer agreements were entered into between the eleven petitioners and the first respondent. Clause 21 of the agreements envisaged that possession of the apartments would be delivered within a period of thirty-six months, which in almost all cases was to be in 2014.

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2. The grievance of the petitioners is that the project was abandoned by the developer. As a result, they instituted proceedings¹ before the National Consumer Dispute Redressal Commission² seeking refund of their moneys with interest. On 12 July 2018, the NCDRC allowed their claim by directing the first respondent to refund the principal amount paid by the petitioners together with 12 per cent interest from the date of deposit along with costs within four weeks. There was a provision in the order for interest being enhanced to 14 per cent if the amount was not paid within the stipulated period. This order of the NCDRC has attained finality.

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3. Execution proceedings³ under Sections 25 and 27 of the Consumer Protection Act 1986⁴ were instituted by the petitioners. The NCDRC issued notice on 7 September 2018. In the meantime, certain orders were passed by the NCDRC on 23 October 2018 in separate execution proceedings pertaining to other home buyers in the same housing project. The first respondent challenged this order of the NCDRC before the High Court of Delhi⁵, and by an order dated 19 November 2018, the order of the NCDRC dated 23 October 2018 was stayed by the Delhi High Court.

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4. The execution proceedings initiated by the petitioners were adjourned by the NCDRC on 13, 25 and 26 February 2019. Certain settlement terms were offered by the judgment debtor on 27 February 2019, which were not acceptable to the decree holders. On 5 March 2019, the proceedings were again adjourned to explore the proposals

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¹ Consumer Complaint Nos 1242, 1243, 1245, 1246, 1248, 1249, 1250 and 1251 of 2017

² “NCDRC”

³ EA Nos 158, 159, 161-162, 164-166 and 168 of 2018

⁴ “COPRA”

⁵ CM(M) No 1391 of 2018

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A furnished by the first respondent. Eventually, on 11 March 2019, since no settlement was arrived at, the Managing Director of the first respondent was directed to appear personally. The first respondent filed a petition⁶ before the Delhi High Court to challenge the order of the NCDRC requiring the personal presence of the Managing Director. By an order dated 27 March 2019, the Delhi High Court issued notice to the
B petitioners and also issued a direction that no coercive steps shall be taken against the Managing Director of the first respondent in terms of the order dated 11 March 2019 passed by the NCDRC. That has given rise to the first in the batch of Special Leave Petitions before this Court, namely, SLP(C) No 12150 of 2019.

C 5. On 1 April 2019, the NCDRC passed a further order in the course of the execution proceedings. Paragraph 14 of the order is extracted below:

D “As the Judgment Debtor has failed to refund the entire amount as directed by this Commission in its order dated 12th July, 2018, we direct the Judgement Debtor to refund the entire amount along with interest and costs in terms of the order dated 12th July, 2018 within two weeks from today failing which Mr. Ajay Sood, Director, shall be taken into custody and all the properties of the Judgment Debtor and the personal properties of the Judgment Debtor shall
E be attached and the decretal amount shall be recovered from it. **However, this order of taking into custody and attachment of property shall be given effect into only after the Hon’ble Delhi High Court decides the matter.”**

(emphasis supplied)

F Thus, the execution applications were disposed of. The order of the NCDRC has resulted in the filing of appeals before this Court, being Civil Appeal Nos 5231-5238 of 2019, by the petitioners/appellants for the limited purpose of challenging the final direction of the NCDRC, *i.e.*, that order of custody of the Managing Director of the first respondent and attachment of properties of the first respondent shall only be given
G effect to once the Delhi High Court decides the first respondent’s petition.

6. During the pendency of the proceedings before this Court, arising out of the order of the Delhi High Court, certain developments took place. On 1 July 2019, notice was issued in SLP (C) No 12150 of 2019

H ⁶ CM(M) No 494 of 2018

and the order of the Delhi High Court was stayed. On 11 September 2019, the Court was informed that seven petitioners have settled their dispute and that a settlement with the others was likely. A

7. In the meantime, on 31 October 2019, proceedings were initiated against the first respondent before the National Company Law Tribunal⁷ under Section 9 of the Insolvency and Bankruptcy Code 2016⁸ by an operational creditor. The Adjudicating Authority admitted the petition, following which the corporate insolvency resolution process⁹ was initiated and a moratorium was declared under Section 14 of the IBC. The specific direction of the NCLT was as follows: B

“15. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry: C

“(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; D

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; E

(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; F

(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.”” G

⁷ “NCLT”/“Adjudicating Authority”

⁸ “IBC”

⁹ “CIRP”

A This order of the NCLT resulted in the filing of a Special Leave
Petition before this Court, being SLP (C) Diary No 45043 of 2019 by
certain other homebuyers. The grievance raised in this petition is that
the application filed for the initiation of corporate insolvency against the
first respondent was merely to stall the refund of the amount due to the
homebuyers, in terms of the order of the NCDRC dated 12 July 2018.

B 8. Thereafter, the petitioners lodged their claims before the
Resolution Professional¹⁰, though without prejudice to their contentions
in the proceedings pending before this Court. The RP issued an
Information Memorandum to prospective Resolution Applicants in terms
of the IBC. Two Resolution Applicants came forth before the RP,
C namely: (i) I & E Advertising Private Limited; and (ii) a consortium
representing the home buyers. It appears that the developer had other
projects as well, and the consortium represented the home buyers of all
the projects.

D 9. In view of these developments, by an order dated 8 July 2021,
this Court directed that a meeting of the Committee of Creditors¹¹ be
convened within a period of two weeks so that a final decision could be
taken on whether any of the Resolution Plans are acceptable to it. The
CoC consists only of representatives of the home buyers, no financial
institutions being involved. The Court has been apprised, by Mr Himanshu
E Satija, counsel appearing on behalf of the RP, that by a vote of 96.93 per
cent, the CoC approved the Resolution Plan which was submitted by the
consortium of home buyers. On 21 August 2021, an application was
filed by the RP for approval of the Resolution Plan before the Adjudicating
Authority and some objections have been received. The Adjudicating
Authority is yet to decide on this application for approval.

F 10. Mr Pawanshree Agarwal appears on behalf of the petitioners.
Mr Himanshu Satija appears for the RP. Mr Manoj Yadav appears for
second to sixth respondents, a group of home buyers. Mr Akshay
Srivastava and Mr Ayush Sharma have intervened on behalf of other
home buyers.

G 11. Mr Pawanshree Agarwal, counsel appearing on behalf of the
petitioners submitted that during the course of the proceedings before
this Court, settlements were arrived at and hence the promoters of the

¹⁰ “RP”

H ¹¹ “CoC”

Corporate Debtor, namely, the first respondent should be held liable personally to honour the settlements, particularly having regard to the order dated 1 April 2019, which was passed by the NCDRC in the course of the execution proceedings. In this context, reliance has been placed on paragraph 10(g) of the Resolution Plan which has been approved by the CoC, which contains the following stipulation:

“10(g). However, the erstwhile management, promoters (de jure or de facto), shareholders, managers, directors, officers, employees, workmen or other personnel who were in charge on or before CIRP commence date of THIPL shall continue to be liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT or any other court/department pursuant to the provisions of the Code or pursuant to any order passed/imposed by the SEBI), whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the acquisition of control by the Resolution Applicant over THIPL, or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT or any other court/department pursuant to the provisions of the Code), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such existing management, promoters (de jure or de facto), shareholders, managers, directors, officers, employees, workmen or other personnel of THIPL, the new management of THIPL and/or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.”

12. The conspectus of facts before this Court reveals that the petitioners have participated in the proceedings before the RP and later, the CoC. The Resolution Plan which has been submitted by the consortium of home buyers stands approved by the CoC and the proceedings are now pending before the Adjudicating Authority, awaiting its approval under Section 31(1) of the IBC. If the petitioners have any objections to the Resolution Plan, they are to submit them before the Adjudicating Authority. We direct the NCLT to ensure that the application for approval

- A is disposed of expeditiously and preferably within a period of six weeks from the date of receipt of a certified copy of this order.

13. Counsel for the petitioners urged that this Court should at the present stage direct that the personal properties of the promoters be attached in view of the provisions contained in the Resolution Plan which have been extracted earlier. The Resolution Plan is still to be approved by the Adjudicating Authority under the provisions of Section 31(1) of the IBC. Hence, at this stage, when the Resolution Plan awaits approval, it would not be appropriate for this Court to issue a direction of that nature. After the Resolution Plan is approved under the provisions of Section 31(1), consequences emanating from the statutory provision would ensue to the benefit of the home buyers. Hence, we have already directed that the NCLT shall dispose of the approval application filed on 21 August 2021, within a period of six weeks from the date of receipt of a certified copy of this order.

- D 14. Further, since the moratorium declared in respect of the first respondent Corporate Debtor continues to operate under Section 14 of the IBC, no new proceedings can be undertaken or pending ones continued against the Corporate Debtor. Section 14(1) of the IBC reads as follows:

E “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—

F (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;

G (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);

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(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.**” A

(emphasis supplied)

15. At this juncture, we must however clarify the right of the petitioners to move against the promoters of the first respondent Corporate Debtor, even though a moratorium has been declared under Section 14 of the IBC. In the judgment in **P. Mohanraj v. Shah Bros. Ispat (P) Ltd.**¹², a three judge Bench of this Court held that proceedings under Section 138 and 141 of the Negotiable Instruments Act 1881 against the Corporate Debtor would be covered by the moratorium provision under Section 14 of the IBC. However, it clarified that the moratorium was only in relation to the Corporate Debtor (as highlighted above) and not in respect of the directors/management of the Corporate Debtor, against whom proceedings could continue. Speaking through Justice Rohinton F Nariman, the Court held: B C D

“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** E F G

¹² (2021) 6 SCC 258

- A **mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.”**
(emphasis supplied)

B 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.

C 16. In view of the above directions, SLP(C) No 12150 of 2019 and SLP(C) Diary No 45043 of 2019 shall stand disposed of as well as the civil appeal, being Civil Appeal Nos 5231-5238 of 2019. Liberty is granted to the petitioners to take recourse to the remedies which are available in law after the decision of the Adjudicating Authority on the approval application under Section 31(1), and subject to the consequence thereafter.

D 17. Pending applications, if any, stand disposed of.