

MR. ANAND RAO KORADA RESOLUTION PROFESSIONAL A

v.

M/S. VARSHA FABRICS (P) LTD. & ORS.

(Civil Appeal Nos. 8800-8801 of 2019)

NOVEMBER 18, 2019 B

[INDU MALHOTRA AND R. SUBHASH REDDY JJ.]

Insolvency and Bankruptcy Code, 2016 – ss.7, 13, 14, 231 and 238 – Respondent No.5 divested its 100% shareholding in respondent No.4 in favour of respondent Nos.1 to 3 – Respondent No.4 shut down its factory – Respondent No.13-Workers' Union filed writ petition and sought payment of arrears and current salaries of the workmen – High Court directed Labour court to quantify the amount payable to workmen – During the pendency of the writ petition, a financial creditor filed petition u/s 7 of the IBC, 2016 before NCLT for initiation of the Corporate Insolvency Resolution Process (CRPF) against respondent No.4 – NCLT declared moratorium u/s.14 of the IBC – During the pendency of moratorium, in the pending writ petition High Court directed valuation of a land owned by respondent No.4 and passed the orders for carrying out auction of the assets of the respondent No.4 – Propriety of – Held: Not proper – In view of the provisions of the IBC, the High Court was not justified in passing the orders for carrying out auction of the assets of the respondent No.4, once the proceedings under the IBC had commenced and an order declaring moratorium was passed by the NCLT – Alienation of the assets of the respondent No.4 during the pendency of the proceedings under the IBC would jeopardise the interest of all the stakeholders – However, it is open for the respondent No.13 to file an application u/regulation 9 of the IBC for payment of arrears, salaries before the competent authority – Therefore, orders passed by the High Court set aside. G

Allowing the appeals, the Court

HELD: 1. The Insolvency and Bankruptcy Code, 2016 was published in the Gazette of India on 28.05.2016. It was framed as a complete code to consolidate and amend the laws relating to insolvency resolution of corporate entities, partnership firms, H

- A and individuals in a time-bound manner, for maximisation of the value of the assets of such persons, and balance the interest of all the stakeholders. The Corporate Insolvency Resolution Process (“CIRP”) could be initiated when a corporate debtor commits a default, either by a financial creditor, or an operational creditor, or the corporate debtor itself. Section 12 of the IBC provides a time-frame to complete the CIRP. As per Section 13 of the IBC, the Adjudicating Authority i.e. the National Company Law Tribunal (“NCLT”) shall declare a moratorium for the purposes referred to in Section 14 of the IBC. [Para 6] [699-G-H; 700-A-B]
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- C 2. In view of the provisions ss.14, 231 and 238 of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT.
- D The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4 – Company i.e. the Corporate Debtor before the NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings. If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders. As a consequence, this Court set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC. [Para 9] [702-B-F]
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- H From the Judgment and Order dated 14.08.2019 & 05.09.2019 of the High Court of Orissa at Cuttack in W.P. (C) No. 7939 of 2011.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos 8800-8801 of 2019.

From the Judgment and Order dated 14.08.2019 & 05.09.2019 of the High Court of Orissa at Cuttack in W.P. (C) No. 7939 of 2011.

Siddharth Bhatnagar, Sr. Adv., Ashok Jain, Pankaj Jain, Amit A
Kasera, Bijoy Kumar Jain, Aditya Sidhra, Advs. for the Appellant.

Vikramjeet Banerjee, ASG, C.U. Singh, Sr. Adv., Shibashish Misra, S. Debabrata Reddy, Ashish Prasad, Ms. Mukta Dutta, Rajesh J., Avinash Tripathi, Zain Maqbool, Rohit Sharma, Mahfooz Ahsan Nazki, Rajesh K. Singh, R.R. Rajesh, Anshul Gupta, Sudhakar Kulwant, Raj Bahadur Yadav, Ms. Archana Pathak Dave, Sandeep Pathak, for the Respondents. B

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

Leave granted. C

1. The present Civil Appeals have been filed by the Appellant – Resolution Professional appointed by the National Company Law Tribunal for the Corporate Debtor – M/s Hirakud Industrial Works Ltd., to challenge the interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court in W.P. (Civil) No. 7939/2011. D

2. This Court *vide* Order dated 23.09.2019 issued Notice to all the parties, including the Writ Petitioners i.e. the Hirakud Workers’ Union – Respondent No. 13 herein. The Appellant was directed to serve *Dasti* Notice to all the Respondents, and the auction proceedings before the High Court were directed to be stayed.

3. Pursuant to the issuance of Notice, all the Respondents were served by the Appellant, and proof of service was filed on 04.11.2019. Respondent No. 13 – Hirakud Workers’ Union was however not represented by Counsel. The Civil Appeals were taken up for hearing on 13.11.2019 before this Court. E

4. The factual matrix in which the present Civil Appeals have been filed is as under :– F

4.1 M/s Varsha Fabrics Pvt. Ltd. (Respondent No. 1), India Finance Ltd. (Respondent No. 2), Mudrika Commercial Pvt. Ltd. (Respondent No. 3), Hirakud Industrial Works Ltd. (Respondent No. 4), and Industrial Development Corporation of Orissa Ltd. (Respondent No. 5) entered into a Share Purchase Agreement (“SPA”) dated 10.07.2006. G

As per the SPA, Respondent No. 5 divested its 100% shareholding in Respondent No. 4 in favour of Respondent Nos. 1 to 3. Respondent No. 4 shut down its factory on 08.05.2007. H

- A 4.2 Subsequently, Respondent Nos. 1 to 3 sold their stake in Respondent No. 4 to Indo Wagon Engineering Ltd. Respondent No. 13 – the Hirakud Workers’ Union filed W.P. (Civil) No. 12479/2009 before the Odisha High Court praying *inter alia* for cancellation of the SPA dated 10.07.2006, and payment of the arrears and current salaries of the workmen.
- B 4.3 Respondent No. 13 filed another Writ Petition bearing W.P. (Civil) No. 7939/2011 on 28.03.2011 for payment of their dues before the Odisha High Court.
- C 4.4 The High Court *vide* Order dated 14.03.2012 directed the Deputy Labour Commissioner, Sambalpur Division (Respondent No. 10 herein) to recover the workmen’s dues by sale of the assets of Respondent No. 4 – Company through a public auction.
- D 4.5 These proceedings culminated in the Order dated 03.08.2015 passed by this Court, wherein it was directed that the issue of quantifying the compensation payable to the workmen should be determined by the Labour Court. It was further directed that if Respondent Nos. 1 to 3 fail to make the payment of compensation to the workmen, the assets of Respondent No. 4 would be sold through public auction, and the proceeds would be used for disbursement of the arrears of the workmen.
- E 4.6 The Labour Court, Sambalpur *vide* Order dated 11.11.2016 quantified the amount payable to the workmen as Rs. 45,66,67,133/-.
- F 4.7 The High Court *vide* Order dated 12.01.2017 directed the Deputy Labour Commissioner, Sambalpur Division to sell a parcel of Respondent No. 4’s land admeasuring 157.27 acres to the Hirakud Dam Project.
- G Upon receipt of the sale proceeds of Rs. 10,04,12,105/- from the Government of Orissa, this amount was disbursed towards the arrears of the workmen’s dues.
- H 4.8 During the pendency of proceedings before the High Court in W.P. (Civil) No. 7939/2011, M/s Nandakini Contractors Pvt. Ltd – a Financial Creditor filed a Petition under Section 7 of the IBC, 2016 bearing CP (IB) No. 01/CTB/

2019, before the National Company Law Tribunal, Cuttack Bench (“NCLT”) for initiation of the Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor – Respondent No. 4, since it had committed a default in paying the financial debt of Rs. 24,11,975/-.

- 4.9 The NCLT *vide* Order dated 04.06.2019 admitted the insolvency petition, and declared a moratorium in accordance with the provisions of Sections 13 and 15 of the IBC. The moratorium was declared for the purpose referred to in Section 14 of the IBC. The Appellant herein was appointed as the Insolvency Resolution Professional. A
- 4.10 During the pendency of the moratorium, W.P. (Civil) 7939/2011 was posted for hearing on 14.08.2019 before the High Court. The Additional Government Advocate submitted that the valuation of the land in Mouza – Tara Nagar owned by Respondent No. 4 was Rs. 6,05,000/- per acre. The High Court directed the Additional Government Advocate to file an affidavit with respect to the valuation conducted. B
- 4.11 The High Court by a further Order dated 05.09.2019, recorded the submission of the Appellant – Resolution Professional that there were other companies which had expressed an interest to participate in the public auction. The matter was posted for further hearing on 17.09.2019. C
- 4.12 The Appellant – Resolution Professional filed the present Civil Appeals to challenge the Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court in W.P. (Civil) No. 7939/2011 on the ground that since the CIRP against Respondent No. 4 had commenced, the proceedings before the High Court in W.P. (Civil) No. 7939/2011 ought to be stayed. D
5. We have heard the learned Counsel appearing for the Appellant – Resolution Professional, Respondent Nos. 1 to 3, and Respondent No. 8 – HINDALCO. E
6. The IBC was published in the Gazette of India on 28.05.2016. It was framed as a complete code to consolidate and amend the laws relating to insolvency resolution of corporate entities, partnership firms, and individuals in a time-bound manner, for maximisation of the value of the assets of such persons, and balance the interest of all the F
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- A stakeholders. The Corporate Insolvency Resolution Process (“CIRP”) could be initiated when a corporate debtor commits a default, either by a financial creditor, or an operational creditor, or the corporate debtor itself.

Section 12 of the IBC provides a time-frame to complete the
B CIRP.

As per Section 13 of the IBC, the Adjudicating Authority i.e. the National Company Law Tribunal (“NCLT”) shall declare a moratorium for the purposes referred to in Section 14 of the IBC.

- Section 14 provides that on the insolvency commencement date,
C the Adjudicating Authority shall by order, declare a moratorium prohibiting 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 any other authority. Section 14 reads as follows :

D **“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: -*

E *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

F *(b) transferring, encumbering, alienating or disposing off 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);*

H *(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.*

(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.* A

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

(a) *such transaction as may be notified by the Central Government in consultation with any financial regulator;* B

(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:* C

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. D

7. Section 238 gives an overriding effect to the IBC over all other laws. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows :

“238. Provisions of this Code to override other laws. –

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.” F

8. Section 231 of the IBC bars the jurisdiction of civil courts in respect of any matter in which the Adjudicating Authority i.e. the NCLT or the NCLAT is empowered by the Code to pass any Order. Section 231 is set out hereinbelow for ready reference :

“231. Bar of jurisdiction. –

No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or the Board is H

- A *empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or the Board under this Code.”*
- B 9. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor – Respondent No. 4 herein, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in
- C this case.

- The moratorium having been declared by the NCLT on 04.06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Respondent No. 4 – Company i.e. the Corporate Debtor before the
- D NCLT. The subject matter of the auction proceedings before the High Court is a vast chunk of land admeasuring about 330 acres, including Railway lines and buildings.

- If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders.

- E As a consequence, we set aside the impugned Interim Orders dated 14.08.2019 and 05.09.2019 passed by the Odisha High Court, as parallel proceedings with respect to the main issue cannot take place in the High Court. The sale or liquidation of the assets of Respondent No. 4 will now be governed by the provisions of the IBC.

- F 10. It is open for Respondent No. 13 – Hirakud Workers’ Union to file an application under Regulation 9 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for payment of arrears, salaries and other dues before the competent authority. Regulation 9 reads as
- G follows :–

“9. Claims by workmen and employees.

- H *(1) A person claiming to be a workman or an employee of the corporate debtor shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form D of the Schedule:*

Provided that such person may submit supplementary documents or clarifications in support of the claim, on his own or if required by the interim resolution professional, before the constitution of the committee. A

(2) Where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one claim with proof for all such dues on their behalf in Form E of the Schedule. B

(3) The existence of dues to workmen or employees may be proved by them, individually or collectively on the basis of -

(a) records available with an information utility, if any; or C

(b) other relevant documents, including -

(i) a proof of employment such as contract of employment for the period for which such workman or employee is claiming dues;

(ii) evidence of notice demanding payment of unpaid dues and any documentary or other proof that payment has not been made; or D

(iii) an order of a court or tribunal that has adjudicated upon the non-payment of a dues, if any."

11. Mr. C.U. Singh, Senior Advocate appeared for Respondent E No. 8 – HINDALCO, which had participated in the public auction of the aforesaid chunk of land before the High Court. The Counsel raised serious objections to the stay of the auction proceedings. He sought permission to file an application before the appropriate authority for deciding the objections raised by Respondent No. 8. F

Mr. Siddharth Bhatnagar, Senior Advocate who was representing the Appellant – Resolution Professional, reserved his right to raise all pleas and contentions, including the plea of *locus standi*, if such an application is filed by Respondent No. 8.

The parties are granted liberty to pursue whatever remedies are G available in accordance with law.

The Civil Appeals are allowed in the aforesaid terms.