

# Saranga Anilkumar Aggarwal vs Bhavesh Dhirajlal Sheth on 4 March, 2025

**Author: Vikram Nath**

**Bench: Vikram Nath, Sanjay Karol**

2025 INSC 314

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4048 OF 2024

SARANGA ANILKUMAR  
AGGARWAL

... APPELLANT(S)

VERSUS

BHAVESH DHIRAJLAL  
SHETH & ORS.

... RESPONDENT(S)

JUDGMENT

VIKRAM NATH, J.

1. The present appeal has been filed against the final judgment and order passed by the National Consumer Disputes Redressal Commission<sup>1</sup>, wherein multiple penalties (27 in total) were imposed on the appellant for failing to deliver possession of residential units to homebuyers as per the agreed timeline. The appellant seeks a stay on the penalty proceedings before the NCDRC, contending that an NCDRC application under Section 95 of the Insolvency and Bankruptcy Code, 2016<sup>2</sup> has been filed against them, triggering an interim moratorium under Section 96 of the IBC.

2. This Court is called upon to adjudicate whether execution proceedings under Section 27 of the Consumer Protection Act, 1986<sup>3</sup>, can also be stayed during an interim moratorium under Section 96 of the IBC. The present matter arises from an application filed by the appellant, who is the proprietor of proforma respondent no. 3 – East & West Builders (RNA Corp. Group Co.), in an execution application filed by respondent nos. 1 and 2 before the NCDRC, challenging the execution of multiple penalty orders imposed by the NCDRC during the pendency of insolvency proceedings against the Corporation. The appellant contends that the imposition and execution of these

penalties should be stayed due to the pendency of insolvency proceedings initiated under Section 95 of the IBC.

3. The appellant is engaged in real estate development and has several pending consumer complaints before IBC CP Act the NCDRC filed by homebuyers alleging delay in possession, deficiency in service, and breach of contractual obligations. The NCDRC, in its final judgment dated 10.08.2018 in CC/1362/2017 along with other connected matters, allowed the complaints and directed the appellant to complete construction, obtain the requisite occupancy certificate, and hand over possession and imposed 27 penalties on the appellant for deficiency in service by failing to deliver possession within a reasonable time. The respondent no.1 and 2, as decree holders, subsequently filed execution applications seeking execution of the abovementioned order of the NCDRC as the appellant failed to comply with the directions of the NCDRC.

4. Subsequently, the appellant, facing insolvency proceedings before the National Company Law Tribunal<sup>4</sup> under the IBC, moved an application before the NCDRC seeking a stay of execution proceedings. The appellant in the application before the NCDRC sought to contest the execution on various grounds, including financial distress, adverse market conditions in the real estate sector, and its ongoing NCLT insolvency proceedings. The appellant contended that it had entered into settlement agreements with several decree holders and had already made significant payments, satisfying a substantial portion of the execution claims. Specifically, the appellant stated that pursuant to entering into respective settlement agreements, it had made entire payments in the matters of seven homebuyers, thereby fully satisfying seven execution petitions, leaving only thirteen execution petitions pending out of a total of twenty. It further stated that a total amount of Rs. 11,57,34,925/- had been paid in execution proceedings. However, some instalment payments were delayed due to reasons beyond its control, particularly adverse economic conditions in the real estate sector. The appellant also contended that it was one of the personal guarantors to credit facilities extended to A.A. Estates Pvt. Ltd. by the State Bank of India (SBI). Due to an alleged default in repayment, insolvency proceedings under Section 7 of the IBC were initiated against A.A. Estates Pvt. Ltd. before the NCLT, Mumbai Bench. Additionally, SBI initiated proceedings under Section 95 of the IBC against the appellant, the proprietor of the Judgment Debtor – proforma respondent no.3. Consequently, an interim moratorium was triggered against the appellant as per Section 96 of the IBC, which the appellant claimed barred further legal proceedings, including the ongoing execution proceedings before the NCDRC.

5. The NCDRC vide the impugned order dated 07.02.2024 rejected this application, holding that consumer claims and the penalty imposed did not fall within the moratorium under the IBC.

6. The NCDRC relied on this Court's decision in *State Bank of India v. V. Ramakrishnan & Anr.*<sup>5</sup>, which clarified that Sections 96 and 101 of the IBC provide a distinct moratorium applicable to personal guarantors, separate from the moratorium under Section 14 applicable to corporate debtors. The NCDRC emphasized that the stay under Sections 96 and 101 extends only to proceedings concerning the debt and does not necessarily shield the guarantor from all legal actions.

7. Additionally, the NCDRC placed significant reliance on this Court's ruling in *Ajay Kumar Radheyshyam* (2018) 17 SCC 394 *Goenka v. Tourism Finance Corporation of India Ltd.*<sup>6</sup>. In that case, this Court reaffirmed that criminal proceedings against directors or signatories of a company do not abate merely because the corporate debtor is undergoing insolvency resolution. This Court, referring to *Manish Kumar v. Union of India and Another*<sup>7</sup>, held that individuals associated with the corporate debtor remain liable for their acts, and the company's dissolution does not absolve them of personal liability under statutes like the Negotiable Instruments Act, 1881<sup>8</sup>.

8. Furthermore, the NCDRC rejected the applicant's reliance on the Bombay High Court's decision in *Sheetal Gupta vs. National Spot Exchange Limited and Ors.*<sup>9</sup>, wherein the Bombay High Court had directed stay of criminal proceedings under Section 138 of the NI Act against the concerned persons representing the corporate debtors. The Commission noted that while this Court had dismissed an appeal against this ruling in SLP (Criminal) No. 4727 of 2023 in order dated (2023) 10 SCC 545 (2021) 5 SCC 1 NI Act 2023 SCC OnLine Bom 3095 28.04.2023, the dismissal was by a brief and non-

speaking order, without any discussion on legal principles. Given that this Court's judgment in *Ajay Kumar Radheyshyam Goenka* (supra) was pronounced in the interim and was not considered in the summary dismissal of the appeal, the NCDRC deemed the earlier Bombay High Court ruling as per incuriam.

9. Accordingly, for the reasons stated above the NCDRC concluded that the interim moratorium under Section 96 of the IBC did not bar the continuation of criminal proceedings under Section 27 of the CP Act, against the applicant in her personal capacity as a guarantor.

10. The appellant is before us challenging this order of the NCDRC.

11. The primary question of law before this Court is whether the execution of penalty orders passed by the NCDRC can be stayed under the interim moratorium provisions of Section 96 of the IBC.

12. The appellant argues that all debts and all proceedings relating to debt are automatically stayed under Section 96 of the IBC. The respondents, on the other hand, contend that the penalties imposed by NCDRC are distinct from "debt recovery" proceedings and should not fall within the ambit of the interim moratorium.

13. The appellant contended that Section 96 of the IBC creates an absolute bar on any proceedings against the debtor relating to any debt once an interim moratorium is in place. It is submitted that the penalties imposed by the NCDRC arise out of financial obligations or debts and must, therefore, be stayed. The appellant submits that as per Section 96 of the IBC when an application is filed under Section 94 or Section 95 of the IBC, an interim moratorium shall commence on the date of the application, in relation to all debts. In the present case the application under Section 95 of the IBC was filed against the appellant on 20.01.2022 and therefore, as per the provisions of Section 96 of the IBC, the interim moratorium commenced against the appellant from 20.01.2022 and thus the proceedings under Section 27 of the CP Act pending before the NCDRC shall be deemed to have

been stayed since as per Section 96(1)(b)(i) of the IBC during the interim moratorium period, “any legal action or proceedings, pending in respect of any debt, shall be deemed to have been stayed.”

14. The appellant further submitted that the proceedings under Section 27 of the CP Act are effectively recovery proceedings. Respondent No. 1 and 2 in their execution application have primarily sought for an award of Rs. 1,55,00,000/- while abandoning the other prayers or reliefs granted in the Consumer Complaint. Therefore, the execution proceedings initiated by the Respondent Nos. 1 and 2 are proceedings to recover the amounts under the garb of seeking an award. Since, the interim moratorium has commenced against the appellant, the appellant is estopped from undertaking any preferential payments, as such the continuation of the execution proceedings against the appellant would constitute an act of double jeopardy.

15. The appellant cited P. Mohanraj and Others v.

Shah Brothers Ispat Private Limited<sup>10</sup>, where it was held that proceedings under Section 138 of the NI Act are covered under “any legal action or proceeding pending” even though they are quasi-

(2021) 6 SCC 258 criminal in nature, thus also staying criminal proceedings against the corporate debtor. The principle that insolvency proceedings should take precedence over all other claims is reiterated, and the appellant seeks similar protection under Section 96 of the IBC for interim moratoriums applicable to personal guarantors and individuals. It is argued that unless such a stay is granted, the insolvency process will be frustrated, and the appellant will be subjected to conflicting proceedings across multiple fora.

16. The appellant also relied upon the judgment of this Court in the matter of SBI V. V.Ramakrishnan (supra), wherein it was held that when an application is filed under Part III of the IBC, an interim moratorium or a moratorium is applicable in respect of any debt due and that the protection under Section 96 of the IBC is far greater than that under Section 14 of the IBC. Reliance was also placed on the judgment of this Court in Kaushalya Devi Massand vs. Roopkishore Khore<sup>11</sup>, holding that the gravity of complaint under the NI Act cannot be equated with an offence under the provisions of the Indian Penal (2011) 4 SCC 593 Code, 1860<sup>12</sup> or other criminal offences and that an offence under Section 138 of the NI Act is almost in the nature of civil wrong which has been given criminal overtones. Thus, it has been submitted, similarly the penal provisions under the CP Act cannot be equated to offences under the IPC. Since these are also recovery proceedings in nature, they would also fall within the ambit of Section 96 of the IBC.

17. It was thus the submission of the appellant that a bare perusal of the aforementioned judgments, would leave no scope of interpretation that the definition of the term ‘debt’ is wide enough to not only include quasi-criminal proceedings but also recovery proceedings. Therefore, it is abundantly clear that the NCDRC erred in dismissing the application filed by the appellant. Furthermore, in view of the settled legal position as enunciated hereinabove, the execution proceeding pending against the appellant must be stayed till the operation of interim moratorium under Section 96 of the IBC.

## IPC

18. On the other hand, the respondent nos. 1 and 2, primarily homebuyers, contend that the penalties imposed by the NCDRC are not merely monetary claims but punitive measures to deter unfair trade practices. They argue that consumer protection proceedings serve a vital public function in ensuring compliance with orders protecting homebuyers, who are already vulnerable due to the developer's delays. The respondents assert that staying such penalties would set a dangerous precedent where developers can indefinitely delay justice by invoking insolvency proceedings.

19. The respondents submitted that the moratorium imposed under Section 96 of the IBC does not extend to criminal proceedings under Section 27 of the CP Act. The respondents contend that the moratorium under Section 96 of the IBC is limited to recovery actions and civil proceedings against the debtor, with no applicability to criminal proceedings. It is submitted that Section 27 of the CP Act provides for punitive action against those who fail to comply with orders of the consumer forum, which is penal in nature and distinct from debt recovery proceedings. The NCDRC, by its order dated 07.02.2024, has rightly held that the moratorium under IBC does not cover criminal proceedings, and such an interpretation is consistent with established judicial precedents. Additionally, the respondents contend that the nature of proceedings under Section 27 of the CP Act is inherently punitive, as it prescribes punishment, including imprisonment, for non-compliance with consumer forum orders. Unlike civil recovery proceedings, which aim at debt enforcement, Section 27 of the CP Act serves a penal function by ensuring compliance with consumer rights and providing a deterrent against non-execution of forum orders. The regulatory and penal proceedings are distinct from civil claims and cannot be stalled due to insolvency moratoriums. Since Section 27 of the CP Act explicitly provides for imprisonment as a consequence of non-compliance, it cannot be considered a mere debt recovery mechanism and thus falls outside the scope of the IBC moratorium.

20. The appellant sought to rely on the Bombay High Court's decision in *Sheetal Gupta v. National Spot Exchange Ltd. & Ors.* (supra), and this Court's subsequent dismissal of the challenge in *National Spot Exchange Ltd. v. Sheetal Gupta & Anr.* (supra). However, the respondents argued that since this Court's order was a mere dismissal without any reasoning, it does not constitute a binding precedent. Citing *Kunhayammed & Ors. v. State of Kerala & Anr.*<sup>13</sup> and *Khoday Distilleries Limited & Ors. v.*

*Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal*<sup>14</sup>, the respondents submitted that a non-speaking dismissal does not decide any legal issue and, therefore, does not attract the doctrine of merger. In contrast, NCDRC correctly applied the ratio of *Ajay Kumar Radheyshyam Goenka* (supra), which distinguishes civil liability from criminal prosecution.

21. The respondents further argued that the moratorium under IBC is designed to protect the assets of the corporate debtor and the personal guarantor from alienation. However, not all debts are covered under this protection. Section 94 of the IBC clarifies that the moratorium applies only to debts that are not "excluded debts" under Section 79(15) of the IBC. As per this provision, liabilities arising from fines (2000) 6 SCC 359 (2019) 4 SCC 376 imposed by courts or tribunals, damages for negligence or breach of obligation, maintenance liabilities, student loans, and other prescribed debts

are excluded. Since the damages awarded by NCDRC and their execution fall under "excluded debts," the moratorium under Section 96 of the IBC does not apply.

22. The respondents emphasize that Section 27 of the CP Act, imposes criminal liability, including imprisonment for non-compliance with consumer court orders. This Court in *Satyawati v. Rajinder Singh and Another*<sup>15</sup>, highlighted the severe impact of delays in execution proceedings, observing that such delays deprive decree-holders of the fruits of litigation. Given that the NCDRC award falls within the category of "excluded debts," the moratorium does not extend to criminal proceedings initiated for its enforcement, these proceedings are merely delay tactics on part of the appellant.

23. The respondents highlighted the prolonged hardship faced by the decree holders due to the appellant's repeated delays in execution proceedings. Despite (2013) 9 SCC 491 this Court's ruling in *Vijay Madanlal Chaudhary & Ors. v. Union of India*<sup>16</sup>, which held that orders granting "no coercive action" should not be treated as a stay of proceedings, the appellant has used such an order to stall the matter. Through a timeline of events the respondents sought to demonstrate the appellant's continued non-compliance, starting from the booking of flats in 2011, the filing of consumer complaints in 2017, the NCDRC's ruling in favour of the consumers in 2018, and the subsequent delays in execution proceedings. Non-bailable warrants were issued against Saranga Aggarwal in 2021 due to non-compliance, yet the appellant has failed to take steps to honour its obligations.

24. Lastly, the respondents counter the appellant's argument that the execution petition's prayer is defective. They submit that the prayer must be read holistically, as it seeks to enforce compliance under Section 27 of the CP Act. The execution petition was filed only after the appellant failed to pay compensation or resume construction as per the consumer court's orders. Given these circumstances, 2021 SCC OnLine SC 1048 the respondents contended that NCDRC's order is legally sound and should be upheld, as the moratorium under IBC does not bar the continuation of criminal proceedings for non-compliance with consumer court awards.

25. In light of the above, the respondent submitted that the appeal against the NCDRC's order is devoid of merit and should be dismissed. The judicial precedents, as well as the legislative intent behind the CP Act and the IBC, make it clear that the moratorium under Section 96 of the IBC is not meant to protect individuals from criminal prosecution. Accepting the appellant's argument would lead to an anomalous situation where persons violating consumer rights could evade penal consequences merely by initiating insolvency proceedings, thereby frustrating the very purpose of consumer protection laws.

26. We have heard Mr. K. Parmeshwar, learned senior counsel appearing for the appellant and Mr. Shashwat Parihar, learned counsel appearing on behalf of respondent nos.1 and 2.

27. We find that there is a fundamental distinction between civil and criminal proceedings concerning a debt moratorium. While civil proceedings are generally stayed under IBC provisions, criminal proceedings, including penalty enforcement, do not automatically fall within its ambit unless explicitly stated by law. The penalties imposed by the NCDRC are regulatory in nature and arise due to non-compliance with consumer protection laws. They are distinct from "debt recovery

proceedings" under the IBC.

28. A moratorium under Section 96 of the IBC is distinct from a corporate moratorium under Section 14 of the IBC. Section 96 of the IBC applies to individuals and personal guarantors and provides that during the interim moratorium period, "any legal action or proceedings relating to any debt shall be deemed to have been stayed." However, it is pertinent to note that this provision applies only to "debt" as defined under the IBC and not to regulatory penalties imposed for non-compliance with consumer protection laws. A careful reading of the statutory scheme of the IBC suggests that penalties arising from regulatory infractions are not covered under the ambit of "debt" as envisioned under the Code.

29. It is well settled that there exists a distinction between punitive actions and criminal proceedings. While a criminal proceeding is initiated by the State against an accused to determine guilt and impose penal consequences, punitive actions in the regulatory sphere, such as those imposed by the NCDRC, are meant to ensure compliance with the law and to act as a deterrent against future violations. Section 27 of the CP Act empowers consumer fora to impose penalties to ensure adherence to consumer protection norms. These penalties do not arise from any "debt" owed to a creditor but rather from the failure to comply with the remedial mechanisms established under consumer law. Unlike a criminal prosecution, which requires the establishment of mens rea, the penalties imposed by NCDRC are regulatory in nature and aim to protect the public interest rather than to punish criminal behaviour.

30. Further, a distinction must be drawn between the moratorium applicable to a corporate debtor under Section 14 of the IBC and the interim moratorium applicable to individuals and personal guarantors under Section 96 of the IBC. The former is much broader in scope and stays all proceedings against the corporate debtor, including execution and enforcement actions. However, Section 96 of the IBC is more limited in its scope, staying only "legal actions or proceedings in respect of any debt." Unlike corporate insolvency proceedings, where the goal is a comprehensive resolution of the company's liabilities, individual insolvency proceedings are designed primarily for restructuring personal debts and providing relief to the debtor. The legislative intent behind limiting the scope of the interim moratorium under Section 96 of the IBC must be respected, and a blanket stay on all regulatory penalties would result in defeating the objectives of consumer protection laws.

31. The moratorium under Section 96 of the IBC is intended to provide temporary relief to debtors by preventing certain proceedings against them during the resolution process. However, this protection is not absolute and does not extend to all categories of debts. The legislative intent behind the moratorium is to ensure that the debtor's assets are preserved for an efficient resolution process and to prevent creditors from taking unilateral actions that may frustrate the objective of insolvency proceedings.

However, the statutory scheme of the IBC makes it clear that the protection under the moratorium does not cover all forms of liabilities, particularly those classified as "excluded debts" under Section 79(15) of the IBC.

32. The respondents have rightly contended that Section 94(3) of the IBC explicitly limits the scope of the moratorium by carving out exceptions for certain categories of debts. Section 79(15) of the IBC defines "excluded debts" to include liabilities arising from fines imposed by courts or tribunals, damages for negligence or breach of obligation, maintenance liabilities, student loans, and other prescribed debts. This classification is based on the nature of such obligations, which are either statutory, penal, or personal in nature, and therefore, they do not form part of the insolvency estate that can be discharged under the resolution process.

33. In the present case, the damages awarded by the NCDRC arise from a consumer dispute, where the appellant has been held liable for deficiency in service. Such damages are not in the nature of ordinary contractual debts but rather serve to compensate the consumers for loss suffered and to deter unethical business practices. Courts and tribunals, including the NCDRC, exercise their statutory jurisdiction to award such damages, and these are distinct from purely financial debts that may be subject to restructuring under the IBC. Since such damages are covered under "excluded debts" as per Section 79(15) of the IBC, they do not get the benefit of the moratorium under Section 96 of the IBC, and their enforcement remains unaffected by the initiation of insolvency proceedings.

34. Furthermore, the rationale behind excluding such liabilities from the moratorium is rooted in public policy considerations. If damages arising from legal violations, consumer protection claims, or penalties imposed by courts and tribunals were to be shielded under the moratorium, it would create an unfair advantage for errant entities and individuals, allowing them to evade their legal obligations under the guise of insolvency. The IBC, being a special law meant to balance the interests of all stakeholders, does not intend to provide relief to those who have been held liable for statutory breaches or misconduct.

35. The penalties imposed by the NCDRC arise due to non-compliance with consumer protection laws and serve a regulatory function rather than constituting "debt recovery proceedings." This distinction is crucial. The IBC is designed to deal with insolvency resolution and financial distress, whereas consumer protection laws exist to uphold consumer rights and ensure fair business practices. The penalties under Section 27 of the CP Act are aimed at compelling compliance and cannot be equated with recovery of an outstanding debt. The appellant cannot claim that such penalties fall within the scope of a debt moratorium, as they do not constitute financial liabilities owed to a creditor but rather statutory obligations enforced to uphold consumer rights. Allowing the stay of such penalties would effectively enable businesses to flout consumer protection mandates by merely initiating insolvency proceedings, which would be an unintended and dangerous consequence of a misinterpretation of the law.

36. The distinction between proceedings under Section 138 of the NI Act and those under Section 27 of the CP Act must also be examined. Proceedings under Section 138 of the NI Act pertain to dishonour of cheques and are criminal in nature, where the assumption of debt is inherent in the offence itself. The dishonour of a cheque indicates a failure to honour financial obligations, and the proceedings are initiated for the recovery of the debt in question. In contrast, Section 27 of the CP Act deals with non-compliance with consumer protection orders, which are remedial in nature rather than criminal. The primary focus of proceedings under Section 27 of the CP Act is to enforce



consumer rights and ensure that service providers fulfil their obligations. These proceedings do not assume the existence of a financial debt but rather deal with deficiencies in service and the failure to comply with consumer redressal mechanisms. Thus, the analogy drawn by the appellant between the moratorium on Section 138, NI Act proceedings and Section 27, CP Act proceedings is misconceived and legally untenable.

37. If the appellant's argument is accepted, homebuyers, who have already suffered immense delays and financial hardship, would be further deprived of relief. The legislative intent behind consumer protection laws is to safeguard the interests of consumers and ensure accountability from service providers. Permitting a stay on regulatory penalties under the guise of insolvency proceedings would undermine the very purpose of the CP Act and embolden errant developers to escape liability through insolvency proceedings. Homebuyers, many of whom invest their life savings in purchasing residential units, are already in a precarious position due to delays in possession and breaches of contractual obligations. Staying penalties that serve as deterrence against such unfair practices would render consumer protection mechanisms ineffective and erode trust in the regulatory framework.

38. Judicial precedents support the view that statutory penalties and regulatory actions do not automatically fall within the ambit of an insolvency moratorium. In *P. Mohanraj* (supra) this Court held that a moratorium under Section 14 of the IBC extends to proceedings under Section 138 of the NI Act. However, a distinction between debt recovery proceedings and punitive actions needs to be created, and therefore all criminal liabilities do not fall within the scope of the moratorium unless explicitly covered under the IBC. Consequently, penalties imposed by regulatory bodies in the public interest cannot be stayed merely because insolvency proceedings are ongoing.

39. The present case does not involve a mere financial dispute but concerns the enforcement of consumer rights through regulatory penalties. Given that the legislative intent behind the CP Act is to ensure compliance with consumer welfare measures, staying such penalties would be contrary to public policy. Further, the appellant cannot invoke insolvency proceedings as a shield to evade statutory liabilities. The objective of the IBC is to provide a mechanism for resolving financial distress, not to nullify obligations arising under regulatory statutes.

40. For the foregoing reasons, this Court finds no merit in the appellant's arguments. The penalties imposed by the NCDRC are regulatory in nature and do not constitute "debt" under the IBC. The moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed for non-compliance with consumer protection laws.

41. The appeal is accordingly dismissed, and the appellant is directed to comply with the penalties imposed by the NCDRC within a period of eight weeks from the date of this judgment.

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

..... J. [VIKRAM NATH] ..... J. [PRASANNA B. VARALE] NEW DELHI;

MARCH 04, 2025.