

# Alchemist Asset And Reconstruction ... vs Deputy Inspector General on 1 September, 2021

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7747/2021

Alchemist Asset And Reconstruction Company Ltd., (Earlier Dhir And Dhir Asset Reconstruction Company Ltd.) A-270, 1St And 2Nd Floor, Defence Colony, New Delhi - 110024 Through Its Authorised Representative Mr. Jeevan Kumar.

----Petitioner

Versus

1. Deputy Inspector General, Registration And Stamp (Tax Evasion) Rajasthan Jaipur Special Circle And Ex Officio Collector (Stamp) Jaipur (Rajasthan).
2. State Of Rajasthan, Through Officer-In-Charge Mr. Panchu Ram Sharma, Joint Director, Industries Deptt. , Udyog Bhavan, Jaipur.
3. Jaipur Metals And Electricals Ltd., Near Jaipur Railway Station, Jaipur Through Its Resolution Professional Mr. Arunava Sikdar Having Office At- D-3, Lgf, Lajpat Nagar, Part I, New Delhi - 110024

---Respondents

Connected With S.B. Civil Writ Petition No. 7748/2021 Alchemist Asset And Reconstruction Company Ltd., (Earlier Dhir And Dhir Asset Reconstruction Company Ltd.) A-270, 1St And 2Nd Floor, Defence Colony, New Delhi - 110024 Through Its Authorised Representative Mr. Jeevan Kumar

----Petitioner Versus

1. Deputy Inspector General, Registration And Stamp (Tax Evasion) Rajasthan Jaipur Special Circle And Ex Officio Collector (Stamp) Jaipur (Rajasthan)
2. State Of Rajasthan, Through Officer-In-Charge Mr. Panchu Ram Sharma, Joint Director, Industries Deptt. Udyog Bhawan, Jaipur.
3. Jaipur Metals And Electricals Ltd., Near Jaipur Railway Station, Jaipur Through Its Resolution Professional Mr. Arunava Sikdar Having Office At D-3, Lgf, Lajpat Nagar, Part I, New Delhi - 110024 (2 of 18) [CW-7747/2021]

---Respondents For Petitioner(s) : Mr. Swadeep Singh Hora with Mr. Palash Gupta For Respondent(s) : Mr. Major R.P. Singh, AAG with Mr. Hemant Kothari HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA Judgment / Order Reserved On 24/08/2021 Pronounced On 01/09/2021

1. The matter comes up on an application filed by the respondents under Article 226(3) of the Constitution of India for vacation of the stay granted by this Court on 30/07/2021.

2. Learned Senior Counsel appearing for the respondent-State submitted that by an interim order, this Court restrained the respondents from proceeding further in pursuance of notice dated 27/04/2021 issued under Section 37 read with Section 51 and 53 of the Rajasthan Stamps Act directing the petitioner-company to pay requisite stamps duty on the documents which were executed as Asset Credit Agreement and other ancillary documents as mentioned in the notice. Learned Senior Counsel submitted that it is a case of evasion of stamps duty for which the Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) alone is empowered to issue notice and the reason put forward by the petitioner's counsel and taken into consideration for granting of an interim stay is not admissible. Learned Senior Counsel further submitted that the petitioner is a creditor company and does not have a locus to challenge the notice under Section 37 of (3 of 18) [CW-7747/2021] the Rajasthan Stamps Act which is essentially issued to the debtor namely; Jaipur Metals and Electricals Limited.

3. Learned counsel for the petitioner has opposed the vacation of stay and in these circumstances, learned counsel for both the sides were heard on merits of the case.

4. Learned counsel appearing for the petitioner submitted that the petitioner is an Asset Reconstruction Company and was originally incorporated in the name of 'Dhir & Dhir Asset Reconstruction & Securitization Company Ltd.'. The petitioner- company, in furtherance of its business activities and interests, acquired the secured loans of the respondent no.3-Jaipur Metals & Electricals Ltd. (for short, 'JMEL') from Industrial Development Bank of India Ltd. (for short, 'IDBI') and for the said purpose of acquisition of said loan advanced by IDBI to JMEL, the petitioner- company entered into an Assignment Agreement dated 11/10/2007 with IDBI. The borrower company namely; JMEL was taken over by the State Government in the year 1986 by the Jaipur Metals and Electricals Limited (Acquisition of Shares) Act, 1986. The IDBI had earlier entered into a loan agreement dated 23/03/1995 with JMEL and a Deed of Hypothecation was also executed between IDBI and JMEL. A mortgage deed was also executed on 07/04/1995. Another loan agreement was executed on 21/03/1996 and Deed of Hypothecation was executed on 21/03/1996. A Joint Mortgage Deed was also executed on 11/04/1996 creating first charge and second charge. On 02/06/1999, the JMEL was declared as a 'Sick undertaking' and in absence of any revival proposal, the BIFR formed an opinion on 17/04/2001 to wind up the JMEL. The BIFR vide order dated 26/09/2002 formed its opinion to wind up the JMEL and the banks (4 of 18) [CW-7747/2021] namely; State Bank of Bikaner & Jaipur-SBBJ (now SBI), Central Bank of India and State Bank of Indore (now SBI) moved application for recovery of dues. The State Bank of Indore (now SBI) loan was assigned in favour of the petitioner-company. The SBBJ (now SBI) also executed an Assignment Agreement of Loan on SBBJ to petitioner-Company.

5. The Winding Up Petition was registered as Company Petition No.19/2009 before this Court whereafter the petitioner-company filed proceedings under the Insolvency and Bankruptcy Code, 2016 (for short, 'IBC') before the National Company Law Tribunal, Principal Bench, New Delhi (for

short, 'NCLT') on 10/01/2018. This Court in the said Company Petition held that while the case was pending before it in company proceedings for appointment of Liquidator, the NCLT could not have appointed Insolvency Resolution Profession (for short, 'IRP') and stayed the order of NCLT which was challenged by the Employees Union of JMEL before the Supreme Court and the Supreme Court vide judgment dated 12/12/2018 set aside the order of the High Court dated 01/06/2018 and directed the NCLT to continue from the stage at which they had been left out. At this stage, the Loan Account of JMEL with Oriental Bank of Commerce was also signed in favour of the petitioner on 27/12/2018.

6. An application was filed by the State of Rajasthan before the NCLT inter-alia seeking directions for impounding of original loan agreement dated 21/03/1996 and that of 1995.

7. It is stated that the proceedings therein are still pending for disposal by the NCLT.

8. In the meanwhile, it is stated that a show cause notice dated 27/04/2021 was issued by the Deputy Inspector General, (5 of 18) [CW-7747/2021] Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) (respondent no.1) under Section 37 read with Section 51 and 53 of the Rajasthan Stamps Act demanding the stamps duty on the concerned documents against which the present petition has been filed by the petitioner-company inter-alia on the grounds that the show cause notice has been issued after 26 years even though there was no deficiency in the stamp duty in terms of exemption provided under Section 39(d) of the Rajasthan Stamps Act. It was further submitted that as the case was pending before the NCLT, the respondent no.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) ought not have issued the notice for evasion of stamp duty as the NCLT is still to examine whether there had been shortfall in payment of stamp duty. It is submitted that if the stamp duty is ultimately found to be paid, the NCLT would pass appropriate orders and if any order is passed by the respondent no.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan), the same would severely prejudice rights and interests of the petitioner-company.

9. Learned counsel for the petitioner further submitted that it is actually the State of Rajasthan itself which was managing the affairs of the JMEL and the State of Rajasthan is already represented through Joint Director (Industries) who has moved application before the NCLT seeking such prayers as similar to the notice given to the JMEL and the petitioner-company under Section 37 of the Rajasthan Stamps Act by the respondent No.1- Deputy Inspector General, Registration & Stamp (Tax Evasion) (6 of 18) [CW-7747/2021] Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan).

10. Learned counsel for the petitioner has also invited provisions of Section 14 of the IBC to submit that there is a moratorium attached once the IBC proceedings have been initiated and, therefore, the respondent No.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) ought not have initiated proceedings during pendency of the insolvency proceedings and it is the NCLT alone which can

examine the matter.

11. In support of his submissions, learned counsel for the petitioner relied upon the judgment rendered by the Apex Court in P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd.: 2021 SCC OneLine SC 152; CIT Vs. Monnet Ispat & Energy Ltd.:

(2018) 18 SCC 786; Alchemist Asset Reconstruction Company Ltd. Vs. M/s Hotel Gaudavan Pvt. Ltd. & Ors.:

(2018) 16 SCC 94 and Mr. Anand Rao Korada Resolution Professional Vs. M/s. Varsha Fabrics (P) Ltd. & Ors.: Civil Appeal No.8800-8801 of 2019. He also relied on the judgments on the ground of delay and laches in initiating proceedings under Section 37 of the Rajasthan Stamps Act.

12. Per-contra, learned Senior Counsel appearing for the respondent-State submitted that the petitioner-company cannot be said in any manner to be affected by the notice as admittedly, if there is any insufficient stamp duty, it is for the JMEL to pay the remaining amount. The corporate debtor being the JMEL, the arguments can only be taken up by the JMEL and not by the petitioner-company which is a purported creditor of the corporate (7 of 18) [CW-7747/2021] debtor. It is submitted that Section 14 of the IBC provides for moratorium only vis-a-vis corporate debtor and the petitioner- company by this writ petition is clearly attempting to seek benefit of moratorium which benefit is not available to it. It is submitted that Section 14 of the IBC is no bar at all for the respondent no.1 for proceeding as against the petitioner for recovery of deficient stamp duty on loan agreements and security agreements which are the basis of claim made by the petitioner as against respondent no.3. The loan agreement and security documents are admittedly under-stamped and liable to be impounded under Section 37 of the Rajasthan Stamps Act, 1998. There is no exemption for payment of stamp duty theft and such a presumption, therefore, cannot be drawn. It is further submitted that exemption available to Government of Rajasthan to not pay stamp duty is not extended to corporations which may be controlled and managed by the Government of Rajasthan. Learned Senior Counsel further submitted that the present writ petition has been filed merely to delay the entire proceedings although the State has already moved application before the NCLT, however, that in no manner stops the respondent No.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan).

13. Heard learned counsel for the parties and carefully considered the material available on record.

14. In the present writ petitions, this Court passed an order dated 30/07/2021 as under:-

"Till the next date, the respondents are restrained to proceed further in pursuance of notice dated 27.04.2021 and the petitioner shall not be forced to (8 of 18) [CW-7747/2021] appear before the Authority in pursuance of the said notice."

15. In a case relating to JMEL, one writ petition, bearing SB Civil Writ Petition No.19134/2017 was filed by M/s Nirban Industrial Components Pvt. Ltd. challenging the notice given to it by the petitioner herein (who is respondent therein) under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') and the arguments were advanced. However, the respondent therein (petitioner herein) stated that they are withdrawing the notice under Section 13(4) of the SARFAESI Act and this Court noticed the arguments of the present petitioner that the moratorium in terms of IBC had been extended by the NCLT upto 31st March, 2020 and therefore, no proceedings in any other Court can be allowed to continue. The learned Senior Counsel also objected relating to original document entered between the concerned Banks and stated that the same were not duly stamped. Keeping in view the submissions, it was noticed that the applications have been filed and documents were produced before the NCLT and the learned Senior Counsel prayed that the High Court should direct the documents to be impounded.

17. In the said background, the Court observed in the writ petition in M/s Nirban Industrial Components Pvt. Ltd. (supra) vide order dated 29/11/2019 as under:-

"In the considered opinion of this Court, the question regarding under-valuation of the agreements which are relied upon by the respondent No.2- Alchemist Asset Reconstruction Company Limited before the NCLT can best be appreciated in the said Court and the State Government would be free to take up the issue before the NCLT and raise all its objections with (9 of 18) [CW-7747/2021] regard to the valuation in terms of stamp duty. Upon such objections the NCLT shall pass appropriate order."

18. Having already observed as above, the question arises 'Whether a separate notice could be issued by the respondent no.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) for evasion of stamp duty under Section 37 read with Section 51 and 53 of the Rajasthan Stamps Act?' It would, therefore, be apposite to notice the provisions of Section 37 read with Section 51 and 53 which read as under:-

"37. Examination and impounding of instruments.-(1) Every person having by law or consent of parties authority to receive evidence, and every person incharge of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State when such instrument was executed or first executed:

Provided that,-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974);

(b) In the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(10 of 18) [CW-7747/2021] (3) For the purposes of this section in cases of doubt,--

(a) The State Government may determine what offices shall be deemed to be public offices; and

(b) The State Government may determine who shall be deemed to be persons incharge of public offices. (4) When a person incharge of a public office, during the course of inspection or otherwise, detects from an instrument or copy thereof or when it appears therefrom to the person referred to in sub-section (1) that the instrument is not duly stamped, such person shall forthwith make a reference to the Collector in that matter.

(5) The Collector may, suo-moto or on such reference, call for the original instrument for ascertaining whether it is duly stamped and the instrument so produced shall be deemed to have been produced or come before him in the performance of his functions and in case the original instrument is not produced within the period specified by the Collector, he may require the payment of the proper duty or the amount required to make up the same together with the penalty under section 44.

51. Instrument undervalued, how to be valued-

(1) Notwithstanding anything contained in the Registration Act, 1908 (Act No. 16 of 1908) and the rules made thereunder as inforce in Rajasthan where, in the case of any instrument relating to an immovable property chargeable with an advalorem duty on the market value of the property as set forth in the instrument, the registering officer has, while registering the instrument, reasons to believe that the market value of the property has not been truly set forth in the instrument, he may either before or after registering the instrument, send it in original to the Collector for taking action under sub-section (3). (2) When through mistake or otherwise any instrument which is undervalued and not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party liable to pay stamp duty an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it and on failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such (11 of 18) [CW-7747/2021] instrument and send it to the Collector

for taking action under sub-section (3).

(3) On receipt of the instrument under sub-section (1) or (2), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in the prescribed manner, determine the market value and stamp duty including the penalty at the rate of two percent of the amount of the deficient duty per month or part thereof for the period during which the instrument remained unstamped or insufficiently stamped or twenty five percent of the deficient stamp duty whichever is higher but not exceeding two times of the deficient stamp duty and surcharge, if any, payable thereon and if the amount of stamp duty including penalty and surcharge, if any, so determined exceeds the amount of stamp duty, including penalty and surcharge, if already paid, the deficient amount shall be payable by the person liable to pay the stamp duty including penalty and surcharge, if any.

(4) Where it appears to a person having by law or consent of parties authority to receive evidence or a person in charge of a public office, during the course of inspection or otherwise, except an officer of a police, that an instrument is undervalued such person shall forthwith make a reference to the Collector in that matter.

(5) The Collector may, suo-moto or on a reference made under sub-section (4) call for any instrument not referred to him under sub-section (1) or (2), from any person referred to in sub-section (4) or the executants or any other person for the purpose of satisfying himself as to correctness of the market value of the property, and if after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine in accordance with the procedure provided in sub-section (3) the market value and the amount of stamp duty, if any, payable thereon together with a penalty at the rate of two percent of the amount of the deficient duty per month or part thereof for the period during which the instrument remained unstamped or insufficiently stamped or twenty five percent of the deficient stamp duty, whichever is higher, but not exceeding two times of the deficient stamp duty, which shall be payable by the person liable to pay the stamp duty and penalty.

(12 of 18) [CW-7747/2021] (6) Where for any reason the original document called for by the Collector under sub-section (5) is not produced or cannot be produced, the Collector may, after recording the reasons for its not production, call for a certified copy of the entries of the document from the registering officer concerned and exercise the power conferred on him under sub-section (5). (7) For the purpose of inquiries under this section, the Collector shall have power to summon and enforce the attendance of witnesses. Including the parties to the instrument or any of them, and to compel the production of documents by the same means, and so far as may be in the same manner, as is provided in the case of civil court under Code of Civil Procedure 1908 (Act 5 of 1908).

53. Determination of the correct nature of the document and the recovery of proper duty- (1) Notwithstanding anything contained in the Registration Act, 1908 (Act 16 of 1908) and the rules made there under as in force in Rajasthan, where the registering officer has, while registering a document or instrument, reasons to believe that the nature of the document or instrument has not been correctly mentioned.

he may, either before or after registering such document or instrument, send it, in original, to the Collector for taking action under sub- section (3). (2) When through mistake or otherwise any instrument which is misclassified and not duly stamped, is registered under the Registration Act, 1908 (Act No. 16 of 1908), the registering officer may call for the original instrument from the party and, after giving the party liable to stamp duty an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it and on failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such instrument and send it to the Collector for taking action under sub-section (3). (3) On receipt of document or instrument under sub- section (1) or (2), the Collector shall, after giving the parties a reasonable opportunity of being heard, determine the correct nature of the document or instrument and the stamp duty including the penalty at the rate of two percent of the amount of the deficient duty per month or part thereof for the period (13 of 18) [CW-7747/2021] during which the instrument remained unstamped or insufficiently stamped or twenty five percent of the deficient stamp duty, whichever is higher, but not exceeding two times of the deficient stamp duty, and surcharge if any payable thereon and may require the payment of the stamp duty including penalty and surcharge, if any, so determined or the amount required to make up the same.

(4) Where it appears to a person having by law or consent of parties authority to receive evidence or a person incharge of a public office, during the course of inspection or otherwise, except an officer of a police that a document or an instrument has not been correctly mentioned while registering it, such person shall forth with make a reference to the Collector to determine the correct nature thereof.

(5) The Collector may, suo-motuor on a reference made under sub-section(4)or otherwise call for and examine any document or instrument not referred to him under sub-section (1) or (2), from any person referred to in sub-section (4) or the executant or any other person, which has been registered and returned to the executant or any other person for the purpose of satisfying himself as to the correctness with regard to the nature of the document or instrument and if he is satisfied, after giving the parties a reasonable opportunity of being heard, that the nature of document or instrument had not correctly been mentioned or determined, he may determine the correct nature of the document or instrument and the stamp duty, if any, payable thereon together with a penalty at the rate of two percent of the amount of the deficient duty per month or part thereof for the period during which the instrument remained unstamped or insufficiently stamped or twenty five percent of the deficient stamp duty, whichever is higher, but not exceeding two times of the deficient stamp duty, and require payment of stamp duty including penalty, if any, so determined or the amount require to-make up the same.

(6) Where for any reason the original document or instrument called for by the Collector under sub-section (5) is not produced or cannot be produced, he may call for a certified copy of the document or instrument from the registering officer concerned and exercise the power conferred upon him in sub-section (5)."

(14 of 18) [CW-7747/2021]



19. From perusal of above, it is, therefore, apparent that the respondent No.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) has an independent right under the Rajasthan Stamps Act, 1998, to initiate proceedings and after hearing the parties, pass appropriate orders for impounding of the documents or otherwise. However, this Court notices that the proceedings under the IBC-2016 are pending before the NCLT, New Delhi. Section 14 of the IBC-2017 reads as under:-

"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:--

(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;

(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.

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

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(15 of 18) [CW-7747/2021]

(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."

20. In the case of P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd. (supra), the Supreme Court has observed as under:-

"14. We now come to the language of Section 14(1)

(a). It will be noticed that the expression "or" occurs twice in the first part of Section 14(1)(a) - first, between the expressions "institution of suits" and "continuation of pending suits" and second, between the expressions "continuation of pending suits" and "proceedings against the corporate debtor...". The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is important to note that an award of an arbitration panel or an order of an authority is also included. This being the case, it would be incongruous to hold that the expression "the institution of suits or continuation of pending suits"

must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of "suits" which are proceedings in civil courts instituted by a plaint (see Section 26 of the Code of Civil Procedure, 1908). Therefore, it is clear that the expression "institution of suits or continuation of pending suits" is to be read as one category, and the disjunctive "or" before the word "proceedings" would make it clear that proceedings against the corporate debtor would be a separate category.

What throws light on the width of the expression "proceedings" is the expression "any judgment, (16 of 18) [CW-7747/2021] decree or order" and "any court of law, tribunal, arbitration panel or other authority". Since criminal proceedings under the Code of Criminal Procedure, 1973 ["CrPC"] are conducted before the courts mentioned in Section 6, CrPC, it is clear that a Section 138 proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a sociis. debt owed by the corporate debtor. Let us now see as to whether the expression "proceedings" can be cut down to mean civil proceedings stricto sensu by the use of rules of interpretation such as ejusdem generis and noscitur a sociis.

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

26. 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 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 (17 of 18) [CW-7747/2021] 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."

21. Therefore, the case was with regard to the question 'whether proceedings under Section 37 of the Rajasthan Stamps Act could be continued while IB proceedings have been initiated'. Considering the entire law, the Supreme Court has concluded that Section 138/141 proceedings against a corporate debtor is covered by Section 14 (1)(a) of the IBC.

22. Presently, however, this Court finds that the petitioner- company is not a corporate debtor and, therefore, while the respondent-State would be restrained from initiating proceedings against the corporate debtor namely; JMEL, the respondent no.1- Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) can always examine the agreements entered as assignment agreements by the petitioner-company with the Bank and the insufficiency of stamp duty therein as under Section 14 of the IBC, moratorium will not apply on the petitioner at all.

23. This Court, therefore, concludes that the petitioner, in the present writ petitions, does not have a locus-standi to challenge the notice served upon it under Section 37 read with Section 51 and 53 of the Rajasthan Stamps Act for insufficient stamps duty paid on the documents, namely; asset credit agreements, executed by it. The petitioner, however, would always be free to raise all objections available under the Act before the respondent no.1-Deputy Inspector General, Registration & Stamp (Tax Evasion) Rajasthan Jaipur Special Circle & Ex-Officio Collector (Stamp), Jaipur (Rajasthan) with regard to the question of (18 of 18) [CW-7747/2021] insufficiency of stamps duty. The moratorium under Section 14 IBC being applicable as against corporate debtor namely; JMEL, the notice issued to the JMEL, however, will be hit by Section 14 of the IBC and in this regard, it would be left open for the adjudicating authority NCLT to pass appropriate orders.

24. In view of above, both these writ petitions are dismissed in the aforesaid terms and the interim order passed by the Court stands vacated. All pending applications stand disposed of. No costs.

(SANJEEV PRAKASH SHARMA),J Raghu Powered by TCPDF (www.tcpdf.org)