

Varrsana Ispat Ltd Through The Rp Of Anil ... vs Deputy Director, Directorate Of ... on 2 May, 2019

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) (Insolvency) No. 493 of 2018

(Arising out of Order dated 12th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CA (IB) Nos. 563, 399 & 550/KB/2018 in CP (IB) No. 543/KB/2017)

IN THE MATTER OF:

Varrsana Ispat Limited
Through the Resolution Professional
Mr. Anil Goel

...Appellant

Vs.

Deputy Director,
Directorate of Enforcement

...Respondent

Present: For Appellant:- Mr. Sumant Batra and Mr. Udit Prakash
Potaliya, Advocates and Ms. Kiran Sharma, C.S.

For Respondents:- Mr. K. Dutta, Mr. Shivam Takia, Mr.
Cheitanya Madan, Advocates.
Mr. Amresh Kumar Jha, Advocate.
Mr. Atul Tripathi, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Directorate of Enforcement of Central Government, New Delhi, attached some of the properties of 'Varrsana Ispat Limited'- ('Corporate Debtor'). The 'Resolution Professional' filed application before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, for releasing the attachment of certain assets of the 'Corporate Debtor' by Deputy Director of Enforcement.

2. On-going through the order of attachment, the Adjudicating Authority observed that the attachment order was issued on 10th July, 2017 prior to the order of declaration of the 'Moratorium' in the case in hand. Therefore, an order releasing the order of attachment by the Directorate of Enforcement is not maintainable. The aforesaid order dated 12th July, 2018 is under challenge in

this appeal.

3. Learned counsel appearing on behalf of the Appellant- 'Resolution Professional' submitted that Section 14 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) has an overriding effect on the provisions of the 'Prevention of Money Laundering Act, 2002'. Reference was made to Section 238 of the 'I&B Code'. It was submitted that during the period of 'Moratorium' the creditors and all authorities causing any disruption in the 'Corporate Insolvency Resolution Process' cannot be allowed to do so.

4. Further, according to counsel for the Appellant, the provisional order of attachment cannot be confirmed by the Directorate of Enforcement during the period of 'Moratorium'.

5. On the other hand, according to learned counsel appearing on behalf of the Directorate of Enforcement, in view of the provisions of 'Prevention of Money Laundering Act, 2002' including Section 2(1)(u) and Company Appeal (AT) (Insolvency) No. 493 of 2018 Sections 3 & 4, the action can be taken under 'Prevention of Money Laundering Act, 2002' even during the period of 'Moratorium'.

6. Section 14 of the 'I&B Code' relates to declaration of 'Moratorium' for prohibiting some of the action as mentioned therein and reads as follows:

"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 Company Appeal (AT) (Insolvency) No. 493 of 2018 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.

(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 Company Appeal (AT) (Insolvency) No. 493 of 2018 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."

7. From a plain reading of Section 14, it is clear that the provision relates to

(i) institution of suits;

(ii) continuation of pending suits;

(iii) proceedings against the 'Corporate Debtor' including execution of any judgment;

(iv) decree of order in any court of law, tribunal, arbitration panel or other authority;

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

(vi) 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; Company Appeal (AT) (Insolvency) No. 493 of 2018

(vii) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

8. Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds. The object of the 'Prevention of Money Laundering Act, 2002' is to prevent the money laundering and to provide confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

9. Section 2(1) (u) of the 'Prevention of Money Laundering Act, 2002' defines "proceeds of crime" which reads as follows:

"2. Definitions. (1) In this Act, unless the context otherwise requires, (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property"

10. Chapter II relates to 'offence of money-laundering' and Section 3 therein relates to 'offence of money-laundering, which reads as follows:

Company Appeal (AT) (Insolvency) No. 493 of 2018 "3. Offence of money-Laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

11. 'Punishment for money-laundering' is prescribed under Section 4 as follows:

"4. Punishment for money-laundering. (1) Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words" which may extend to seven years", the words "which may extend to ten years" had been substituted."

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12. From the aforesaid provisions, it is clear that the 'Prevention of Money-Laundering Act, 2002' relates to 'proceeds of crime' and the offence relates to 'money-laundering' resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the 'Prevention of Money Laundering Act, 2002' or provisions therein relates to 'proceeds of crime', we hold that Section 14 of the 'I&B Code' is not applicable to such proceeding.

13. In so far as penalty is concerned, offence of money-laundering is punishable with rigorous imprisonment which is not less than three years and has nothing to do with the 'Corporate Debtor'. It will be applicable to the individual which may include the Ex-Directors and Shareholders of the 'Corporate Debtor' and they cannot be given protection from the 'Prevention of Money Laundering Act, 2002' and such individual cannot take any advantage of Section 14 of the 'I&B Code'. This apart,

we find that the attachments were made by the Deputy Director of Directorate of Enforcement much prior to initiation of the 'Corporate Insolvency Resolution Process', therefore, the 'Resolution Professional' cannot derive any advantage out of Section 14.

14. As the 'Prevention of Money Laundering Act, 2002' relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the 'I&B Code', having no overriding effect of one Act Company Appeal (AT) (Insolvency) No. 493 of 2018 over the other including the 'I&B Code', we find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya] Chairperson [Justice Bansilal Bhat] Member (Judicial) NEW DELHI
2nd May, 2019 AR Company Appeal (AT) (Insolvency) No. 493 of 2018