

2022 LiveLaw (SC) 428

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

UDAY UMESH LALIT; J., S. RAVINDRA BHAT; J., PAMIDIGHANTAM SRI NARASIMHA, J.

March 28, 2022

WRIT PETITION (CIVIL) NO.93 OF 2022 WITH W.P. (C) NO.300 OF 2020
NARINDER GARG & OTHERS Versus KOTAK MAHINDRA BANK LTD. & OTHERS

Insolvency and Bankruptcy Code, 2016; Section 14 - Negotiable Instruments Act, 1881; Section 138 and 141 - Moratorium - Liability of natural persons like a Director of the Company - The moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act.

Counsel for the Parties: Mr. Gopal Sankarnarayanan, Adv. Mr. Aman Preet Singh Rahi, Adv. Mr. A. Venayagam Balan, AOR Ms. V. S. Lakshmi, Adv. Mr. AVS Subramanyam, Adv. Mr. Kamil Khan, Adv. Mr. T. R. B. Sivakumar, AOR Ms. Jaspreet Gogia, AOR Ms. Mandakini Singh, Adv. Mr. Karanvir Gogia, Adv. Ms. Shivangi Singhal, Adv. Ms. Ashima Mandla, Adv. Ms. Aishwarya Bhati, ASG Ms. Sonia Mathur, Sr. Adv. Ms. Praveena Gautam, Adv. Ms. Swarupama Chaturvedi, Adv. Mr. O.P. Shukla, Adv. Mr. Kanu Agrawal, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Chetanya Singh, Adv. Mr. Nishanth Patil, AOR Mr. Gaurav Goel, AOR Mr. Abhinav Agrawal, AOR

ORDER

WRIT PETITION (CIVIL) NO.93 OF 2022

The instant writ petition has been filed seeking following reliefs:

“a) Issue Writ of mandamus, Order or Direction or any other appropriate writ, quashing the Criminal Complaints mentioned in para 2.46 of the Writ Petition filed against the Petitioner Company/Corporate Debtors and its Directors under Section 138 of the Negotiable Instruments Act, 1881 pending before concerned the Judicial Magistrate/Chief Metropolitan Magistrate/Judicial Magistrate of 1st Class in view of the order dated 18.3.2020 passed by the National Company Law Tribunal, Chandigarh in C.A. No.610 of 2019 in CP (IB) No.119/Chd/CHD/2018 by which the Resolution Plan was approved by the CoC under Section 30(4) of the Code and as the Respondent Complainants has accepted the approved Resolution Plan; or in the alternative

b) Issue Writ of mandamus, Order or Direction or any other appropriate writ, quashing the Criminal Complaint mentioned in para 2.46 of the Writ Petition which were initiated after the order of moratorium dated 13.11.2018 passed by the National Company law Tribunal, Chandigarh in CP (IB) No.119/Chd/Chd/2018, as it cannot be proceeded even if the old management and its Director takes over the Corporate Debtor in view of the findings rendered in the Judgment of this Hon’ble Court in Civil Appeal No.10355 of 2018.”

The case of the petitioners was before the Bench which was considering the matter in *P. Mohanraj & other connected matters*. However, the case was de-tagged pursuant to order dated 02.02.2021.

In *P. Mohanraj & Others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258*, a Bench of three-Judges of this Court considered the matter whether a corporate entity in respect of which moratorium had become effective could be

proceeded against in terms of Sections 138 and 141 of the Negotiable Instruments Act, 1881 (“the Act” for short).

A subsidiary issue was also about the liability of natural persons like a Director of the Company. In paragraph 77 of its judgment, this Court observed that the moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act.

It is submitted by Mr. Gopal Sankaranarayanan, learned Senior Advocate that the resolution plan having been accepted in which the dues of the original complainant also figure, the effect of such acceptance would be to obliterate any pending trial under Sections 138 and 141 of the Act.

The decision rendered in *P. Mohanraj* is quite clear on the point and, as such, no interference in this petition is called for.

This writ petition is, therefore, dismissed.

WRIT PETITION (CIVIL) NO.300 OF 2020

In view of the order passed in Writ Petition (Civil) No.93 of 2022, this writ petition is also dismissed.

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