THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Petition No. 32740 of 2017

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

In this writ petition, a direction is sought either to the Debt Recovery Tribunal to receive the application filed under the Insolvency and Bankruptcy Code, 2016 (for short "the Code") or for the Senior Civil Judge concerned to entertain the application made under the Provincial Insolvency Act, 1920.

Section 243(1) of the Code provides for the repeal of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. Section 179 of the Code relates to the adjudicating authority for individuals and partnership firms; and under Sub-Section (1) thereof, subject to the provisions of Section 60, the adjudicating authority, in relation to insolvency matters of individuals and firms, shall be the Debts Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides, or carries on business, or personally works for gain; and can entertain an application under the Code regarding such person. Section 180(1) provides that no Civil Court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal has jurisdiction under the Code. Section 181(1) provides for an appeal from the order of the Debts Recovery Tribunal under the Code to the Debts Recovery Appellate Tribunal.

Part-II of the Code relates to Insolvency Resolution and Liquidation for Corporate Persons, and Section 4(1) stipulates that

Part-II of the Code shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rupees one lakh. Section 7(1) of the Code enables a financial creditor, either by itself or jointly with other financial creditors, to file an application for initiating corporate insolvency resolution process against a corporate debtor before the adjudicating authority when a default occurs. The adjudicating authority in Part-II is the National Company Law Tribunal (NCLT) in terms of Section 60(1) of the Code.

Section 1(3) of the Code stipulates that the Code shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Clauses (a) to (d) of Section 2, Sections 4 to 32, Sections 60 to 77, Section 188, Section 231, Sections 236 to 238 and Clauses (a) to (f) of Sub-section (2) of Section 239 were notified in SO 3494(E) dated 30.11.2016, and were published in the Gazette of India dated 30.11.2016. Likewise, Sections 188 to 194 were notified by S.O. 2618(E) dated 5.8.2016 and published in the Official Gazette of India dated 5.8.2016. Sections 241 and 242 of the Code were notified by S.O. 2746(E) dated 19.8.2016 and were published in the Official Gazette of India dated 19.8.2016. As the aforesaid provisions, including Sections 4 to 32 and Sections 60 to 77, have already been notified, these provisions have come into force; and, consequently, the applications, relating to Corporate Bodies/Companies, are justifiably being entertained by the NCLT. It is only if Sections 179, 181 and Section 243(1) are also notified, would the Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909 stand repealed; and insolvency applications, relating to individuals and firms, can be entertained by the Debts Recovery Tribunal.

Sri K. Lakshman, learned Assistant Solicitor General, would submit, based on the instructions received from the Executive Director, Insolvency and Bankruptcy Board of India, dated 14.9.2017, that Sections 179(1) and Section 243 of the Code have not been brought into force; the Central Government (Ministry of Corporate Affairs) has not issued a notification under Sub-section (3) of Section 1 of the Code to bring these Sections into force; therefore, these provisions are not in force; the Finance Ministry issued a press release on 28.8.2017 clarifying that Section 243 of the Code, which provides for the repeal of the Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909, have not been notified till date; Section 243 which provides for repeal of the said enactments, and the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part-III of the Code, have not been notified till date; and stakeholders, who intend to pursue their insolvency cases, may approach the appropriate authority/Court under the existing enactments, instead of approaching the Debts Recovery Tribunals. A copy of the press release of the Government of India dated 28.8.2017 has also been placed for our perusal.

As Section 243(1) of the Code has not been brought into force, by way of a notification to be issued by the Government of India under Section 1(3) of the Code, it is clear that neither the Presidency Towns Insolvency Act, 1909 nor the Provincial Insolvency Act, 1920 have been repealed; and both these enactments continue to remain in force. Further, as Section 179(1) of the Code has also not been brought into force, the Debts Recovery Tribunal is justified in not entertaining such applications.

We consider it appropriate, therefore, to direct that the adjudicating authority (Senior Civil Judge concerned) under the Provincial Insolvency Act, 1920 shall entertain the insolvency application in as much as the provisions of the said Act continues to remain in force, and does not stand repealed till date.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

3rd October, 2017

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