THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.A. NO.2 OF 2018 IN C.R.P. NO.4077 OF 2018
AND
CIVIL REVISION PETITION NO.4077 OF 2018

O R D E R

This civil revision petition under Article 227 of the Constitution was originally filed by the corporate-debtor aggrieved by the order dated 13.07.2018 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (*hereinafter*, 'the Tribunal'), in C.P.(IB) No.56/9/HDB/2018. By the said order, the Tribunal admitted the petition filed against it under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*for brevity*, 'the Code of 2016') and passed a moratorium order while appointing an Insolvency Resolution Professional.

By order dated 17.07.2018, this Court took note of the fact that the corporate-debtor had produced original demand drafts for the sums of Rs.69,82,000/- and Rs.57,70,887/- respectively, which sum, in total, was stated to be sufficient to cover the claim of the respondent-company, the petitioner in C.P.(IB) No.56/9/HDB/2018. Taking note of the financial liquidity of the corporate-debtor, this Court granted interim suspension of the order under revision, subject to deposit of the said demand drafts with the Registrar (Judicial) of this Court.

As noted *supra*, the corporate-debtor itself filed this civil revision petition in the first instance. However, realising that it may not be proper on its part to do so after the admission of the company petition, the Managing Director of the corporate-debtor, being one of its shareholders, filed I.A.No.2 of 2018 seeking to be substituted in its place as the petitioner in this revision petition. As there is no opposition to this application, the same is ordered. Registry shall ensure that the substitution is carried out before issuing a copy of this final order.

Sri D.Prakash Reddy, learned senior counsel appearing for Sri Avinash Desai, learned counsel for the petitioner, would contend that the order under revision is unsustainable on two grounds. He would point out that the respondent-company filed C.P.(IB) No.56/9/HDB/2018 based on the Memorandum of Understanding dated 18.06.2014 and the Tribunal admitted the company petition on the strength thereof. He would assert that the said Memorandum of Understanding did not suffer stamp duty and was therefore inadmissible in terms of Section 35 of the Indian Stamp Act, 1899, but despite this aspect being raised, the Tribunal ignored the same and admitted the company petition.

The second ground urged by the learned senior counsel is that the Tribunal brushed aside the issue of limitation raised by the corporate-debtor. He would point out that though Section 238A was introduced in the Code of 2016 with effect from 06.06.2018, the mere absence of any provision in the Code hitherto in relation to the Limitation Act, 1963 (*for brevity*, 'the Act of 1963'), did not have the effect of obviating the applicability of the provisions thereof in the light of Section 29(2) of the Act of 1963. Learned senior counsel would assert that the Tribunal ought to have allowed a further opportunity of hearing on this issue instead of baldly concluding that the provisions of the Act of 1963 were not applicable and that the ground urged in that regard had no substance.

This Court finds merit in these contentions.

No doubt, the Liquidator would have an opportunity to verify and reject a claim made by a creditor at a later point of time under Section 39 of the Code of 2016. However, the very admission of the company petition on the strength of an inadmissible document would perhaps be of fatal import. This aspect of the matter therefore required to be looked into by the Tribunal. An order of admission of a company petition filed under Section 9 of the Code of 2016, with its inevitable consequences, would seriously impact the corporate-debtor and such an exercise ought not to be undertaken lightly by the Tribunal. Presently, neither of the grounds urged by the corporate-debtor, though adverted to in the order of admission, was specifically addressed by the Tribunal. The order of admission therefore suffers on this count and is liable to be set aside.

Further, Sri D.Prakash Reddy, learned senior counsel, and Sri M.V.Hanumantha Rao, learned counsel appearing for the respondent-company, the petitioner in C.P.(IB) No.56/9/HDB/2018, would inform this Court that the entire amount due and payable by the corporate-debtor to the respondent-company has been paid in full separately, in terms of a compromise arrived at by and between them.

In that view of the matter, it is evident that the admission of the petition and the consequential orders are, in any event, no longer warranted. However, as already noted *supra*, the very admission of the petition suffers for want of application of mind by the Tribunal to the two specific grounds urged by the corporate debtor.

The civil revision petition is accordingly allowed setting aside the order dated 13.07.2018 passed by the Tribunal in C.P.(IB) No.56/9/HDB/2018.

As the amount due has already been paid separately by the corporate-debtor to the respondent-company, the Registrar (Judicial) of this Court is directed to return the demand drafts bearing Nos.016091 and

016092, both dated 16.07.2018, for the sums of Rs.69,82,000/- and Rs.57,70,887/- respectively, to Sri Avinash Desai, learned counsel.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

14th SEPTEMBER, 2018

Svv/PGS