

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3288 of 2018

Harvinder Kaur W/o Shri Navjeet Singh Tuteja Aged About 40 Years
R/o Tuteja Niwas Near Raja Talab ,Govind Nagar, Raipur District
Raipur Chhattisgarh. **--- Petitioner**

Versus

1. The Union of India through Principal Secretary , Ministry of Corporate Affairs New ,Delhi, District : New Delhi, Delhi
2. Insolvency and Bankruptcy Board of India 7th Floor Mayur Bhawan Shankar Market Connauth Circus, New Delhi., District : New Delhi, Delhi
3. State of Chhattisgarh through the Collector Raipur District : Raipur, Chhattisgarh
4. Union Bank of India through Branch Manager Pandri Branch, Raipur District : Raipur, Chhattisgarh
5. Aditya Birla Housing Finance Limited Office No. TF15-A and 16, 3rd Floor Millennium Plaza, Bans Tal Raipur District Raipur Chhattisgarh,through Its Authorized Officer **--- Respondents**

Presence :

For the petitioner : Mrs. Hamida Siddiqui, Advocate

For respondent No.1 : Mr.B.Gopa Kumar, Asst. Solicitor General

For the State/R-3 : Mrs. Astha Shukla, P.L.

For Respondent No.4 : Mr. Ankit Pandey, Advocate

For respondent No.5 : Mr. Ashish Shrivastava, Advocate

WPC No. 3298 of 2018

Navjeet Singh Tuteja S/o Amrik Singh Tuteja Aged About 44 Years
R/o Tuteja Niwas, Near Raja Talab, Govind Nagar, Raipur, District-
Raipur, Chhattisgarh. **--- Petitioner**

Versus

1. Union of India Through Principal Secretary, Ministry of Corporate Affairs, New Delhi., District : New Delhi, Delhi
2. Insolvency And Bankruptcy Board of India 7th Floor, Mayur Bhawan, Shanker Market, Connaught Circus, New Delhi., District : New Delhi,

Delhi

3. State of Chhattisgarh through the Collector, Raipur, Chhattisgarh.,
District : Raipur, Chhattisgarh
4. Union Bank of India through Branch Manager, Pandri Branch, Raipur,
District- Raipur, District : Raipur, Chhattisgarh
5. Aditya Birla Housing Finance Limited Office No. TF-15-A & 16, 3rd
Floor Millennium Plaza, Bans Tal Raipur, District- Raipur,
Chhattisgarh through Its Authorized Officer, District : Raipur,
Chhattisgarh

--- Respondent

Presence :

For the petitioner : Mrs. Hamida Siddiqui, Advocate

For respondent No.1 : Mr.B.Gopa Kumar, Asst. Solicitor General

For the State/R-3 : Mrs. Astha Shukla, P.L.

For Respondent No.4 : Mr. Ankit Pandey, Advocate

For respondent No.5 : Mr. Ashish Shrivastava, Advocate

HON'BLE SHRI JUSTICE GOUTAM BHADURI

Order on Board

04.07.2019

1. Since the question of law and facts involved in both the petitions are almost similar, they are heard together.
2. The instant petitions have been filed for the following relief (s).

10.1	That this Hon'ble Court may kindly be pleased to take cognizance of this situation and may be kind enough to pass an order for a fresh start for discharge of his qualifying that under Section 94 of the Act.
10.2	Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner together with cost of the petition.

3. Learned counsel for the petitioner(s) would submit that the petitioners have approached Debts Recovery Tribunal (for short 'DRT') to declare them as insolvents by invoking provisions of section 94 of the Insolvency and Bankruptcy Code, 2016 (for short "the Code of 2016").

4. It is contended that since 94 of Part-III of the Code, 2016 has not been notified, the Tribunal was not having jurisdiction to hear the matter. Hence these writ petitions.
5. The primary objection which has been raised by respondent no.5 is that there is no dispute as to the fact that the Part-III of the Code, 2016 has not been notified, however, under the circumstances, the petitioners have the remedy under the old Acts i.e., Presidency Towns Insolvency Act 1909 and the Provincial Insolvency Act, 1920, which deal with the individual insolvency act.
6. Perused the order of Debts Recovery Tribunal dated 24.10.2018. Section 1 of Part-I relating to Preliminary of the Insolvency and Bankruptcy Code, 2016 Act reads as under :

1. Short title, extent and commencement.- (1) This Code may be called the Insolvency and Bankruptcy Code, 2016.

(2) It extends to the whole of India;

Provided that Part III of this Code shall not extend to the State of Jammu & Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint :

Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

7. A reading of Section 1 of the Code, 2016 purports that on the date of subsequent notification to be so made by the Central Government, the provision of section and dates would come into force.
8. Here in the instant petitions, the main relief sought to invoke section 94 which is covered under Chapter-III of the Code, 2016 has not been notified by the Central Government. Consequently, it will not come into force in the statute book itself.

9. Likewise repeal and savings under section 243 of the Code 2016, the same is also not notified. Consequently, the earlier Acts i.e., The Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920 would hold the field. Therefore, in absence of publication of notification u/s 94 which is covered under Chapter-III of the Code, 2016, the relief as sought in such nature cannot be granted by exercising the jurisdiction under Article 226 of the Constitution of India as it would amount to over-riding the act of legislation. Accordingly, the petitions are dismissed.
10. The petitioners shall be at liberty to avail the remedy as available under the law.

**Sd/-
(Goutam Bhaduri)
Judge**