

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2019

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

CrI.R.C.No.760 of 2018 and
CrI.M.P.No.8733 of 2018

1. M/s.Nathellasampath Jewellery (P) Ltd.,
rep. by Nathella Ranganatha Gupta

2. Nathella Ranganatha Gupta ... Petitioners

Vs

Hemant Mehta ... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of Cr.P.C. seeking to set aside the order dated 28.06.2018 in CrI.M.P.No.5079 of 2018 in C.C.No.1476 of 2018 passed by the Fast Track Court II (Metropolitan Magistrate), Egmore at Allikulam, Chennai-3.

For Petitioners : Mr.V.Karthik,S.C.
M/s.K.P.Ananthakrishna

For Respondent : Mr.S.A.Raja

ORDER

The above Criminal Revision Petition has been filed against the order, dated 28.06.2018 in CrI.M.P.No.5079 of

2018 passed by the learned Metropolitan Magistrate (Fast Track Court II), Egmore at Allikulam, Chennai, rejecting the petition filed in CrI.M.P.No.5079 of 2018 by the accused/petitioners herein, praying to permit the Authorized Interim Resolution Professional, Mr.Ram Ratan Kanoongo to represent for and behalf of first petitioner company in all further proceedings in C.C.No.1476 of 2018.

2. According to the petitioners/accused, the company approached the National Company Law Tribunal (in short, 'the Tribunal'), Chennai by filing a petition as Corporate Debtor under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate ISRP. The Tribunal delivered its order on 23.4.2018 on the Corporate Debtor Application. While passing the order, subsequently on 21.6.2018, the Tribunal appointed one Shri Ram Ratan Kanoongo as Interim Resolution Professional (in short, 'IRP'). On the appointment of IRP, the Directors of the first petitioner company ceased to have any control over the same. Therefore, in the pending proceedings before the Metropolitan Magistrate Court, a petition was filed on behalf

of the petitioner company to permit the IRP to represent for and on behalf of first petitioner company. The trial Court, after advertng to the petition, has dismissed the same. Against the same, the present revision has been filed.

3. According to the trial Court, the accused cannot represent through the representative in the proceedings initiated under Section 138 of Negotiable Instruments Act (in short, 'N.I.Act') and the order passed by the Tribunal is not relevant and will not bind the proceedings.

4. Shri V.Karthik, learned Senior Counsel appearing for the revision petitioners would submit that the trial Court has completely misdirected itself by dismissing the petition without proper understanding of the scheme of Insolvency and Bankruptcy Code, 2016 and the Rules framed therein. He would initially draw the attention of this Court to Section 305 of Cr.P.C., particularly, Sub Clause 2, which reads as under:

“305. Procedure when corporation or registered society is an accused. Right of person against whom proceedings are instituted to be

defended.

(1)

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) to (6)

5. According to the learned Senior Counsel, the Company can appoint its representative to represent the same as per the above provision. He would also refer to relevant provisions of the Insolvency and Bankruptcy Code, 2016 to point out the fact that as to how the trial Court has erred in dismissing the petition. Firstly, the learned Senior Counsel would draw the attention of this Court to Section 17, particularly, Sub Clause (1)(a) & (b) of Section 17, which reads as under:

“17. Management of affairs of corporate debtor by interim resolution professional.

(1) From the date of appointment of the interim resolution professional.

(a) the management of the affairs of the

corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.”

(c) & (d)

(2) ”

(a) to (d) ”

6. Secondly, he would refer to Section 25 which enumerates the duties of Resolution Professional and draw the reference to Sub Clause 2 (a) & (b), which reads as under:

“25. Duties of Resolution Professional.

(1)

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:— (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor; (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

7. Thirdly, the learned Senior counsel would draw reference to Section 35(k) which reads as under:

“35. Powers and duties of liquidator

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;

8. The learned Senior Counsel would also draw reference to Sections 86, 97 to 99 of the Insolvency and Bankruptcy Code, 2016, which deal with the scope of functioning of the Resolution Professional. The learned Senior Counsel would therefore, submit that once the IRP is appointed by the Tribunal, he takes charge of the affairs of the company and it is no more under the control of the erstwhile Directors and therefore, in any quasi and judicial proceedings, the Directors who stand removed, cannot represent the company including the proceedings initiated under Section 138 of N.I.Act. In fact, the Directors are barred from representing the company when IRP is appointed by the Tribunal. Unfortunately, the learned Magistrate has completely failed to appreciate the scheme of the Insolvency and Bankruptcy Code, 2016 and impact of the direction of the

Tribunal and dismissed the petition without delving those issues at all by a laconic order.

9. Per contra, Mr.Raja, learned counsel appearing for the respondent would submit that appointment of IRP is only a temporary measure and he cannot represent the company and such Professionals are only appointed to look after day to-day affairs of the company and they cannot represent the company as such in any judicial proceedings. He would therefore submit that the trial Court has correctly taken the decision and dismissed the petition, which does not call for interference.

10. Heard the learned Senior Counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the entire materials available on record.

11. This Court finds considerable force in the contention put forth by the learned Senior Counsel appearing for the revision petitioners that once IRP is nominated and

appointed by the Tribunal, he takes complete charge of the company and he alone can prosecute and being prosecuted for and on behalf of the company. The provisions as relied on by the learned Senior counsel for the petitioners are very clear on that aspect. Once the IRP is appointed, the affairs of the company vest in him for all matters and therefore, it is not open to the trial Court exercising its jurisdiction under Section 138 of N.I.Act to reject the petition on the ground that the order passed by the Tribunal is not binding. The learned Magistrate, in fact, has passed a non-speaking order without applying his mind to the scheme of Insolvency and Bankruptcy Code, 2016 and the scope and import of the appointment of the IRP to take charge of the company affairs. The learned Magistrate has erroneously felt that it was not binding on him without appreciating the fact that once IRP is appointed, the erstwhile Directors cannot represent the company at all in any proceedings. Therefore, the petition filed by the petitioners herein ought to have been allowed, but unfortunately, the learned Magistrate by mis-directing himself, has dismissed the same.

12. For the foregoing reasons, the Revision Petition is allowed and the impugned order passed by the learned Magistrate, dated 28.6.2018 is hereby set aside and accordingly, the CrI.M.P.No.5079 of 2018 in C.C.No.1476 of 2018 is allowed.



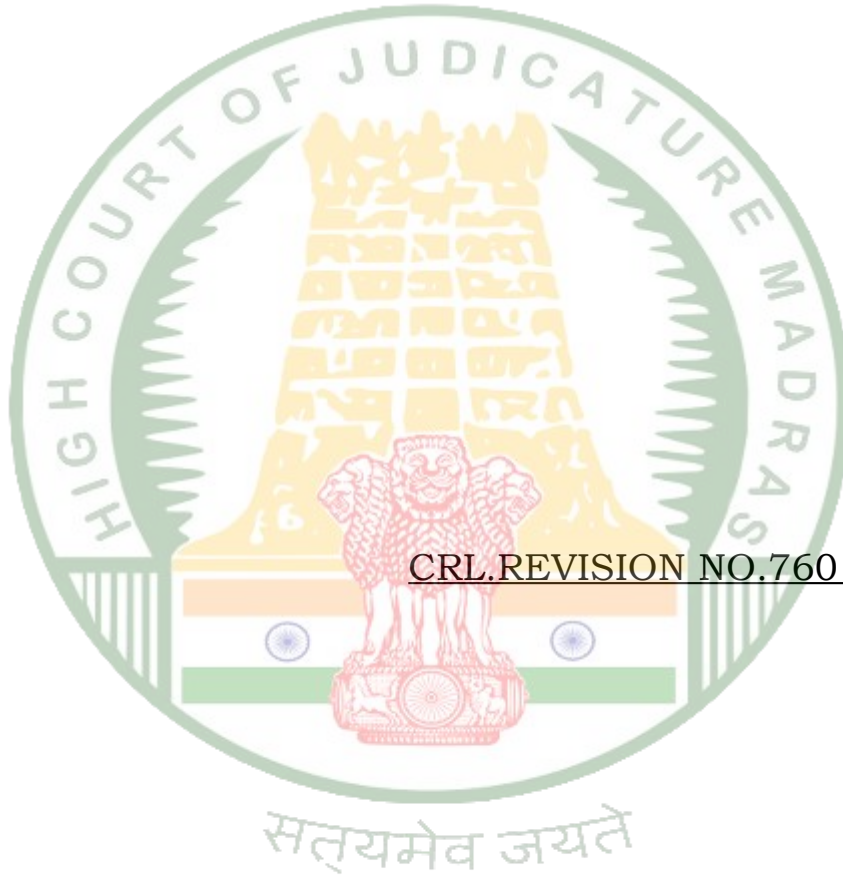
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